S. HRG. 99-204

EXTENDED VOLUNTARY DEPARTURE ISSUES

HEARING

BEFORE THE

SUBCOMMITTEE ON IMMIGRATION AND REFUGEE POLICY

OF THE

COMMITTEE ON THE JUDICIARY UNITED STATES SENATE

NINETY-NINTH CONGRESS

FIRST SESSION

ON

S. 377

A BILL TO PROVIDE FOR A GENERAL ACCOUNTING OFFICE INVESTIGATION AND REPORT ON CONDITIONS OF DISPLACED SALVADORANS, TO PROVIDE CERTAIN RULES OF THE HOUSE OF REPRESENTATIVES AND OF THE SENATE WITH RESPECT TO REVIEW OF THE REPORT, TO PROVIDE FOR THE TEMPORARY STAY OF DETENTION AND DEPORTATION OF CERTAIN SALVADORANS, AND FOR OTHER PURPOSES

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EXTENDED VOLUNTARY DEPARTURE ISSUES

MONDAY, APRIL 22, 1985

U.S. Senate,
Subcommittee on Immigration and Refugee Policy,
Committee on the Judiciary,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:35 a.m., in room SD-226, Dirksen Senate Office Building, Hon. Alan K. Simpson (chairman of the subcommittee) presiding.

Present: Senators Simpson, Grassley, and DeConcini.

Staff present: Richard Day, chief counsel; Jerry Tinker, minority counsel; John Ratigan and Jodi Brayton, counsels; Carl Hampe, legislative assistant; Deborah Gibbs, chief clerk, Dee Dee Herzog, intern.

OPENING STATEMENT OF HON. ALAN K. SIMPSON, A U.S. SENATOR FROM THE STATE OF WYOMING

Senator Simpson. Good morning. We are here this morning to discuss the deportation of Salvadorans to El Salvador, the conditions that those deportees face when returned to El Salvador, and the merits of S. 377, which is legislation introduced by my friend, the able and responsive Senator DeConcini, that would suspend the deportation of nationals of El Salvador for up to 18 months.

I think this is a topic that deserves our current attention. Indeed it seems to create a significant amount of heat and often some false hopes and sometimes only small flickers of illumination.

So let us see if we can find a bit more about it today.

It is a tragic situation in El Salvador today in which the citizens are unfortunately involved. I recognize and appreciate the humanitarian concern that many in the United States have for those Salvadorans fleeing their homeland.

However, we must separate fact from impassioned pleas and to this moment, at least, there has been simply no evidence that those who are returned to El Salvador right now in these times are singled out for persecution or have become the victims of intended violence.

Conversely, there is ample evidence that El Salvadorans have traditionally come to this country for economic reasons and will continue undoubtedly in ever increasing flows if blanket legal status—extended voluntary departure, or suspension of deportation—is granted to them.

Certainly, there are instances where deportable aliens from a specific country should be treated with particular care, and El Salvador is one of them. Yet no country in the world or in or out of this hemisphere has been examined so closely by a combination of

U.S. Government personnel and international assistance agencies in order to determine how it is treating its own citizens. Until firm evidence of persecution or selected victimization is established, I believe it is most imperative to continue our monitoring, but it is not wise to grant a blanket immigration remedy.

But in this context, the portion of S. 377 which instructs the GAO to study the fate of Salvadorans who are deported to El Salvador may, indeed, deserve consideration.

Concurring with a bipartisan subcommittee staff report which was an excellent joint effort of Mr. Day, the chief counsel, and Mr. Tinker, the minority counsel, I requested the administration to conduct a study, and while a recent study by the State Department in response to that request has already revealed that Salvadorans may return home and live safely, perhaps another review and study might be desirable.

However, I do not believe we should distort our laws concerning political asylum nor jeopardize the United State's role as the most generous country of refuge in the world for permanent resettlement, because we are. There is no question about that.

I think that is the essential point. What are we doing worldwide? The answer: more than all the rest of the countries in the world. So that is the situation.

Many countries such as Thailand—and I was recently there—Austria, and Italy, accept refugees on only a temporary basis, on the certain reliance that other countries, usually the United States, Canada and the Western European nations will eventually resettle those who cannot ultimately return to their homes. It is highly unlikely to think that Salvadorans given a, quote, "temporary" legal status in this country would return home voluntarily when conditions, quote, "changed," unquote, in El Salvador.

It is even more unlikely that the INS could enforce their departure after such a status was terminated. So by accepting hundreds of thousands of people in a temporary refugee status, we shall certainly, I think, weaken the American public's receptiveness toward accepting truly needy and certifiable refugees from overseas in the future.

And after all, our normal annual number of refugees under the act is 50,000 and this year we will accept 70,000. So as a subsequent result, if U.S. receptivity to refugees is weakened, I feel we might also weaken the receptivity to refugees of those countries that now so well provide first asylum to political refugees.

Well, I would just conclude and say that this remarkable haven of first asylum is not always well received by citizens of a country when there is a distortion between refugees and economic migrants. It is tough enough in first asylum to deal with the true refugee. It becomes more distorted in any country of first haven when that conflict of definition arises. So I think it would be particularly tragic if our historic generosity were diluted by an act where we would give quasi-refugee status to hundreds of thousands who would likely become, in fact, permanent residents of the United States.

I think such an indiscriminant selection process might only further an American sense of what I have referred to, but not in humor, as compassion fatigue, and later lessen our Nation's willingness to respond to untold numbers of the truly persecuted humans around the world. The demands upon us will never slow.

We had best be fully authentic in our efforts. I think our citizens and our systems require it. So now to our hearing, and I have here with me my fine colleague from Iowa, Senator Grassley, who has been absolutely noble in his efforts of assisting me with the immigration issue and immigration reform and I may inquire as to whether he may have any statement to make at this time.

STATEMENT OF HON. CHARLES E. GRASSLEY, A U.S. SENATOR FROM THE STATE OF IOWA

Senator GRASSLEY. Yes; I appreciate the chairman's leadership in this area specifically on this question and also I want to take this opportunity immediately after his showing of appreciation for my attendance and loyalty that I am going to have to apologize and say that I cannot be with you throughout all of this hearing and hopefully that you will realize that I had a conflict and cannot be here.

But I want to say that I appreciate very much your conducting this hearing today on this very important subject which is important to a number of people in my State. On a recent visit home, I met with a group, several groups across my State, interested in the DeConcini bill which provides for suspension of deportation of undocumented Salvadorans.

. In discussion with these groups, I learned that there are strong feelings in Iowa in support of the Salvadorans, and I share some of those feelings.

However, I felt that prior to taking a position on the DeConcini legislation it was important for this subcommittee to hold hearings on the bill to establish a full record on the issue and let all sides air their views.

And at this point in the record, if I could, I would like to have a letter printed that I wrote to you asking for hearings, and I know I am not the only one who requested these hearings, and I know you probably would have had your hearings anyway. But I would still like to have that put in the record.

Senator SIMPSON. Without objection.

[Information follows:]

United States Senate

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March 4, 1985

The Honorable Alan K. Simpson
Chairman, Subcommittee on Immigration
and Refugee Policy
Senate Judiciary Committee
Washington, DC 20510

Dear Al:

This is to request that the Subcommittee on Immigration and Refugee Policy conduct a hearing on the DeConcini-Moakley bill, S. 377, at the earliest possible date.

Granting extended voluntary departure to Salvadorans is an important topic that deserves our attention. There are valid points on both sides of the issue which need airing. A hearing will help to serve this purpose and assist us in determining the merits of the legislation.

Thank you for your consideration of this matter.

Sincerely,

Chuck Grassley

Charles E. Grassley
United States Senator

CEG:amm

United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 99th CONGRESS, FIRST SESSION

Vol. 131 WASHINGTON, TUESDAY, FEBRUARY 5, 1985 No. 11

Senate

By Mr. DECONCINI (for himself, Mr. KENNEDY, Mr. PELL, Mr. DURENBERGER, Mr. SPECTER, Mr. BOSCHWITZ, and Mr. LEAHY):

S. 377. A bill to provide for a General Accounting Office investigation and report on conditions of displaced Salvadorans, to provide certain rules of the House of Representatives and of the Senate with respect to review of the report, to provide for the temporary stay of detention and deportation of certain Salvadorans, and for other purposes; to the Committee on the Judiciary.

INVESTIGATION AND REPORT WITH RESPECT TO DISPLACED SALVADORANS

Mr. DECONCINI. Mr. President, today I am introducing legislation to suspend the deportation of Salvadorans from the United States and to require the impartial General Accounting Office to study and report to Congress the living conditions and security of displaced Salvadorans in Central America.

Many of us in Congress have been trying for the last 3 years to persuade the Department of Justice to stop the deportations of Salvadorans from the United States. Although Congress adopted a resolution in 1983 recommending that Salvadorans be granted extended voluntary departure [EVD] status in the United States, the Reagan administration has simply ignored it. In November 1983, Representative JOE MOAKLEY and I introduced legislation to require that the United States suspend the deportations. The Moakley bill was reported near the end of the last Congress by the House Immigration Subcommittee. The leadership of this body did not feel the issue to be important enough to schedule hearings on my bill, S. 2131.

There is renewed interest in the plight of Salvadorans at this time because of the ongoing Government prosecution of religious leaders involved in the sanctuary movement in the United States. While I do not condone the activities of those in the sanctuary movement, I certainly understand and sympathize with their motives. I believe, however, that instead of breaking the law, we should strengthen our resolve to change it.

The nation of El Salvador, a country about the size of Massachusetts, is plagued with widespread violence—both random and specifically directed. Amnesty International reports that at least 40,000 civilians have been killed since 1980. It is also estimated that 1 million people or 20 percent of the population of El Salvador is externally or internally displaced. Half a million are still in Central America, particularly Honduras, Guatemala, Mexico, and El Salvador itself. Another half a million are in the United States. INS has estimated that 250,000 of these Salvadorans have entered since January 1980. There are approximately 65,000 Salvadorans in the metropolitan Washington, DC, area alone.

The United States has repatriated, through deportation or voluntary departure, approximately 35,000 Salvadorans in the last 5 years. Thousands of Salvadorans have applied for political asylum, but only 3.3 percent have been granted such status. This figure is drastically lower than such countries as Iran, Ethiopia, Honduras, Nicaragua, or Poland.

Although I question the low percentage of asylum claims approved, it is important to point out that my legislation is not intended to raise it. My legislation is not designed, nor should it be interpreted to protect persons who can prove an individual well-founded fear of persecution. If an individual is being targeted as a returnee, he or she should be granted asylum. Suspension of deportation or EVD should be granted because of the general condition of violence that exists in El Salvador.

I do not offer this legislation as a criticism of the administration's policies in El Salvador or Central America. I have supported U.S. policy in El Salvador because I believe it is in the best interests of both countries. However, along with that involvement comes certain responsibilities. We have a responsibility to these distressed people to protect them from violence, both random and specific. It is my hope that the serious nature of this problem will be realized and that Congress will take action on this issue early in this session.

Mr. President, I ask unanimous consent that the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 377

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—GENERAL ACCOUNTING OFFICE INVESTIGATION AND REPORT

INVESTIGATION

SEC. 101. (a) REQUIRING GAO INVESTIGATION ON DISPLACED SALVADORANS.—Within 60 days after the date of the enactment of this Act, the Comptroller General shall begin an investigation concerning displaced nationals of El Salvador.

(b) DETERMINATIONS ON DISPLACED SALVADORANS IN CENTRAL AMERICA.—The investigation shall determine the following with respect to displaced Salvadorans who are present in either El Salvador, Honduras, Guatemala, or Mexico, regardless of whether or not they are registered:

(1) The number of these displaced persons and their current locations.

(2) Their place of origin in El Salvador and the period of, and reason for, their displacement.

(3) Their current living conditions, with particular attention to (A) their personal safety and the personal safety of those providing assistance to them, and (B) the availability of food and medical assistance.

(4) An assessment of (A) current efforts to provide food, medical assistance, housing, and other necessities and to secure personal safety for these persons, and (B) policies and procedures that reasonably could be implemented to assure more efficient and equitable distribution of this assistance.

(5) The impact of the war in El Salvador and of activities of officers of the Government or political parties in El Salvador on the matters described in the previous paragraphs.

(c) INVESTIGATIONS ON SALVADORANS RETURNED TO EL SALVADOR FROM THE UNITED STATES.—In the case of nationals of El Salvador who have been required (whether through deportation, voluntary departure proceeding, or otherwise) to depart from the United States and who return to El Salvador, the investigation shall assess—

(1) their condition and circumstances in El Salvador upon return from the United States, with particular attention to any violations of fundamental human rights that have occurred upon their return to El Salvador; and

(2) the extent to which these persons, upon their return, have become displaced persons within El Salvador.

(d) DETERMINATIONS ON SALVADORANS IN THE UNITED STATES IN AN UNLAWFUL STATUS.—In the case of nationals of El Salvador who are present in the United States in an unlawful status, the investigation shall—

(1) compare the situation in El Salvador with the situation in other countries during periods when nationals of those countries have been provided administrative grants of extended voluntary departure under the immigration laws,

(2) describe the policies and procedures of the United States respecting the treatment of aliens (other than Salvadorans) in the United States in similar circumstances, and

(3) describe the policies of all other countries in which Salvadorans have sought refuge as these policies concern the return of the Salvadorans to El Salvador.

REPORT

SEC. 102. The Comptroller General shall submit to the Speaker of the House of Representatives and the President of the Senate, not later than one year after the date of the initiation of the study under section 101, a report on that study including detailed findings on the items described in subsections (b), (c), and (d), of that section.

TITLE II—CONGRESSIONAL REVIEW

REFERRAL OF REPORT, COMMITTEE HEARINGS, AND COMMITTEE REPORT

SEC. 201. (a) Referral.—The report, when submitted under section 102, shall be referred, in accordance with the rules of each House, to the standing committee or committees of each House of Congress having jurisdiction over the subjects of the report, and the report shall be printed as a document of the House of Representatives.

(b) COMMITTEE HEARINGS.—No later than 90 days of continuous session of Congress after the date of the referral of the report to a committee, the committee shall initiate hearings, insofar as such committee has legislative or oversight jurisdiction, to consider—

(1) the findings of the report,

(2) the appropriate steps that should be taken to provide assurances of personal safety and adequate, efficient and equitable distribution of assistance with respect to Salvadorans who are displaced within El Salvador or who have fled to other countries in Central America,

(3) treaty obligations of the United States, humanitarian considerations, and previous practice of the United States respecting the treatment of aliens in similar circumstances, and

(4) whether it is appropriate to extend, remove, or alter the restrictions contained in title III.

(c) COMMITTEE REPORT.—No later than 270 days of continuous session of the Congress after the date of the referral of the report to a committee, the committee shall report to its respective House its oversight findings and any legislation it deems appropriate.

(d) TREATMENT OF CONTINUITY OF SESSION.—For purposes of this Act, continuity of session of Congress is broken only by an adjournment sine die at the end of the second regular session of a Congress, and days on which either House of Congress is not in session because of an adjournment of more than 10 days to a date certain are excluded from the computation of the periods of continuous session of Congress.

TITLE III—TEMPORARY STAY OF DEPORTATION

LIMITATION ON DETENTION AND DEPORTATION

SEC. 301. (a) LIMITATION.—(1) Except as provided in paragraph (2), the Attorney General shall not detain or deport (to El Salvador) aliens described in subsection (b) during the period beginning on the date of enactment of this Act and ending 270 days of continuous session of Congress after the date of transmittal of the report of the Comptroller General to the Speaker of the House of Representatives under section 102.

(2) Paragraph (1) shall not be construed to prohibit the brief interrogation of an alien under section 287(a)(1) of the Immigration and Nationality Act (8 U.S.C. 1357(a)(1)) for the purpose of determining whether this section applies to particular aliens.

(b) SALVADORANS COVERED BY THE LIMITATION.—The nationals referred to in subsection (a)(1) are aliens who—

"(1) are nationals of El Salvador,

"(2) are continuously present in the United States since the date of the enactment of this act, and

"(3) are determined to be deportable only under—

(A) paragraph (1) of section 241(a) of the Immigration and Nationality Act (8 U.S.C. 1251(a)), but only as such paragraph relates to a ground for exclusion described in paragraph (14), (15), (20), (21), (25), or (32) of section 212(a) of such Act (8 U.S.C. 1182(a)), or

(B) under paragraph (2), (9), or (10) of section 241(a) of such Act (8 U.S.C. 1251(a)).

PERIOD OF STAY OF DEPORTATION NOT COUNTED TOWARDS OBTAINING SUSPENSION OF DEPORTATION BENEFIT

SEC. 302. With respect to an alien whose deportation is temporarily stayed under section 301 during a period, the period of the stay shall not be counted as a period of physical presence in the United States for purposes of section 244(a) of the Immigration and Nationality Act (8 U.S.C. 1254(a)).

Senator GRASSLEY. And I would like to say, too, that a bill in this area is an extraordinary step, but in today's atmosphere of immigration control, particularly in today's atmosphere of immigration control, the last thing that Congress should do is to take steps that would encourage illegal immigration. And I know that is a very long tightrope that you have to walk in between what we would do for humanitarian purposes and what we might do to encourage illegal immigration. But hopefully a hearing like this would help.

I have already said to you, Mr. Chairman, I cannot stay for the entire hearing, but I do plan to study the record thoroughly, so as to ensure that I do not inadvertently out of sympathy for an indeed unfortunate group of people send the wrong signal which would only contribute to our present situation of uncontrollable immigration. Thank you, Mr. Chairman.

Senator SIMPSON. Chuck, thank you very much.

And now let me go to our Senator from Arizona, Dennis DeConcini, who I serve with on two committees in this fascinating arena, the Judiciary Committee and Veterans' Affairs, and I have come to know personally and very, very honestly of your deep concern and sincerity on issues that you involve yourself in.

So I will be very pleased to hear you present your position with the legislation and I appreciate you being here.

STATEMENT OF THE HON. DENNIS DeCONCINI, A U.S. SENATOR FROM THE STATE OF ARIZONA

Senator DECONCINI. Mr. Chairman, let me express to you and to Senator Grassley my deep appreciation in return for your deep appreciations, that we are most appreciative that we are here today. The busy schedule you have and the commitments I know you have and the leadership role that you play in the Senate, to find time for these hearings early in the session is not only demonstrative of your concern and your continued interest in this subject matter, but, quite frankly, a personal favor to this Senator.

I also want to thank Mr. Day for his time and effort that he has put in with my staff and others to see that we have an opportunity to have a full hearing.

Mr. Chairman, I am well aware of your long standing involvement in this area and I have tagged along with you sometimes in opposition and sometimes in support. But no one would ever leave any indication of anything but total sincerity on the part of the chairman, Mr. Simpson, of this committee in his willingness to hear a subject matter, his willingness to be open, his willingness to disagree and to be a formidible advocate, as I have learned on the Senate floor on a number of occasions when we have been in disagreement and also when we have supported each other.

The efforts before us, and why I am here started over 5 years ago. I have joined the effort in trying to persuade the administration to voluntary grant extended voluntary departure status to Salvadorans. This started somewhat as a small item on my agenda in Arizona visiting with a few Salvadorans, going and sending staff members to the detention center in El Centro, now having one in the State of Arizona in Florence. And it became clear to me after talking to many religious leaders, even some of the churches that have not officially supported the sanctuary movement, that there must be an effort to do something to resolve this particular problem.

It is now time to make mandatory what I think we tried to urge upon the administration last year in a voluntary manner. I became involved in the Salvadoran issue in the United States because of my concern for the plight of Salvadorans in my own home State. The great tragedy of those displaced El Salvador has become their constant fears and often suspicions.

For them every day and every person they come into contact with brings the possibility of discovery and return. The nation of El Salvador, a country about the size of Massachusetts, is plagued with the widespread violence, both random and specifically directed. The efforts of this violence can be seen throughout the streets of El Salvador and on the faces of the people. And I have visited there, as you have, Mr. Chairman, and met with many of those in refugee camps.

Amnesty International reports that at least 40,000 civilians have been killed since 1980. It is also estimated that 1 million, 20 percent of the population of El Salvador is externally or internally displaced. Half a million are still in Central America, particularly in Honduras, Guatemala, Mexico, and El Salvador itself.

The other half million, a great number of those are in the United States. There are approximately 65,000 Salvadorans in the Metropolitan Washington, DC area alone. However, even more than facts and statistics, the story of Maria and Jose epitomize the violence which forces Salvadorans to leave their homelands, and in many cases their families, in search of safe haven. As a result of this violence, Maria, 20 years old, and her 16-year-old brother Jose were sent to the United States by their parents. Prior to their being sent Maria and Jose's older brother, their uncle and aunt were all killed in separate acts of violence. They believe their brother was killed by the National Guard because the Guard thought he might be involved with the guerrillas.

Their uncle was killed when his car was ambushed by the guerrilla forces. The aunt was then slain allegedly by guerrilla forces also while in her home.

Following these tragic deaths in early 1984 Maria and Jose's mother became very ill. The children and their parents attempted to travel to San Salvador to obtain necessary medical care which was unavailable in their own village. They were traveling in a hired truck with approximately 20 other persons.

En route guerrillas stopped the truck and ordered everyone out. The children's mother was so ill that she was unable to get out of the truck. While all the other passengers waited outside the truck the guerrillas took two of the passengers, a mother and her young child, and shot them. These brutal killings were done to impress upon other passengers that the guerrillas meant to enforce their closure of the highway to the villages. It was these experiences of violence which finally forced this family to bear the heavy sorrows of separation rather than risk the possibility that Maria and Jose would also become victims in this war torn country.

The violence is widespread and ongoing. There are countless stories about the violence perpetrated by the National Guard and the death squads. There is capable and competent evidence of the terrorism created by the guerrillas. And so we have both sides involved in the violence and the atrocities.

Today there is renewed interest in the plight of Salvadorans because of the government's prosecution of religious leaders involved in the santuary movement in the United States. These persons feel compelled to act because of the condition existing in El Salvador, many of which I have seen for myself and have described to you. Many of us in Congress have been trying for the last 5 years to persuade the Department of Justice to stop the deportation of Salvadorans from the United States.

Although Congress adopted a resolution in 1983 recommending that Salvadorans be granted extended voluntary departure status in the United States, the administration has simply ignored it. The effect of the administration's policies can be seen even in my home State of Arizona. Three students from Arizona State University College of Law began working in January in Florence, Arizona with the Central American Refugee Fund. These students are assisting Salvadorans with the filing of asylum applications. They estimate that approximately 30 applications are processed per week. No application has been granted since their work began, and the students know of only one application having been granted prior to their arrival.

Because the Reagan administration has failed to recognize the concern of those in Congress in November 1983 Representative Joe Moakley and I, introduced legislation to mandate by law that the United States suspend the deportation.

The Moakley bill was reported near the end of the last Congress by the House Immigration Subcommittee. Unfortunately, there was not time for the Immigration Subcommittee of the Senate to examine this important issue by considering the bill.

This year Congressman Moakley and I have reintroduced legislation, H.R. 822 and the present bill before us, S. 377. Once again these companion bills would suspend the deportation of Salvadorans from the United States for a period of approximately 18 months to 2 years. The legislation would require that the General Accounting Office conduct a study into the conditions existing in Central America and the plight of Salvadorans both internally and externally displaced, including those persons returned by the United States to El Salvador.

I believe it is important, Mr. Chairman, that this study be done by the impartial GAO rather than the administration, as required by last year's bill. It is important to clarify what the suspension would and would not do. The suspension would not preclude a Salvadoran from applying for refugee status or amnesty. In fact, those persons who are the target of specific persecution should continue to apply for asylum and should not just be given a suspended deportation.

The legislation would not qualify anyone for Federal financial air or assistance. Salvadorans would remain subject to all Federal and State criminal and civil laws and would be subject to deportation for any violation thereof; because the Moakley-DeConcini bill would not apply to those Salvadorans entering the United States after the enactment of the bill there would be no incentive offered to those who are not already here. Prior grants of EVD have never been shown to have increased immigration into this country nor to have encouraged people to stay in this country once EVD was lifted.

We have attempted to draft this bill in such a way, as to avoid the label of partisan politics and to ensure its passage this year. The bill is not intended as a criticism of the administration's policy in El Salvador.

And I might add, Mr. Chairman, I have been one of the strong supporters of President Reagan's foreign policy in El Salvador. Rather, along with our involvement in Central America there must come certain responsibilities. We have a responsibility to these distressed people to protect them from the violence, both random and specific, which is occurring in Central America at this very moment. This responsibility and the need of these people must come first and transcend concerns relating to partisan politics. It is not often we in Congress can so clear see direct and individual benefits of our legislative efforts, for the persons in our country from El Salvador are not merely statistics or Government figures.

They are very real people with compelling needs, and many have tragic stories. They need and deserve our help and protection. I hope the Members of Congress will give them just that with the passage of this bill. Thank you, Mr. Chairman.

Senator SIMPSON. Thank you very much, Dennis. I appreciate it and know of your very real interest and the very real interest of your constituents and I understand that.

And if you wish to come forward and join us here at the committee table, please do so. Anything you would wish to ask of any of the witnesses or whatever, I would be very pleased to have you stay. Thank you so much.

Senator DECONCINI. Thank you.

Senator SIMPSON. And now we will go to the first panel, which is the Hon. Elliott Abrams, Assistant Secretary of State, Bureau of Human Rights and Humanitarian Affairs; and the Hon. Alan Nelson, Commissioner of the Immigration and Naturalization Service.

It is good to have both of you here, and I think, Elliott, if you would proceed.

STATEMENTS OF A PANEL CONSISTING OF ELLIOTT ABRAMS, ASSISTANT SECRETARY OF STATE, BUREAU OF HUMAN RIGHTS AND HUMANITARIAN AFFAIRS; AND ALAN C. NELSON, COMMISSIONER, IMMIGRATION AND NATURALIZATION SERVICE

Secretary ABRAMS. With your permission, Mr. Chairman, I thought I would submit my prepared testimony for the record and try to save a bit of time and make a few comments.

Senator SIMPSON. Please. That would be perfectly appropriate.

Secretary ABRAMS. I am struck—as we have discussed over the past year or so, the past 2 years, more and more the proposal to suspend deportation of Salvadorans—by the fact that the situation in El Salvador gets better and better. If you look at the U.N. Human Rights Commission, which has not been a particularly friendly body toward the Government of El Salvador, they passed a resolution this year, this March, noting the "sharp drop in the number of political assassinations, detentions, and disappearances" in El Salvador in the last year. I think we are all aware of that.

The statistics will bear that out, and so we are confronted with what seems to me quite an anomalous situation. The better the situation gets in El Salvador, the louder seem to be the calls for a suspension of deportation here. It is standing logic on its head. And one of the things that strikes me as very odd is that we do not take account really of the improved situation there by realizing that the need for EVD or suspension of deportation, whatever it may have been in 1980 or 1981 at the height of the violence—and we can debate that—continues to decrease with every passing month, happily.

On the question of violence against those who return to El Salvador, once again it was perhaps an open question in the minds of many a few years ago, but I find it hard as time goes by to see why it remains an open question. Studies have been done. None of them is a perfect study. Ours is not; the ACLU's is not. But we now have quite a handfull of them and they all point in the same direction, which is that no one can demonstrate these allegations, and we have heard allegations that a third of the people deported are killed, half are killed, a fourth are killed.

Well, it sure does not show up when you try to find it out in some kind of organized manner. The most recent study, one just completed by the Intergovernmental Commission on Migration [ICM], indicates once again that there is not any evidence of this kind of violence.

If you go beyond studies and you just try to ask the people in El Salvador who ought to know: if you ask the human rights groups, the archbishop, the human rights offices of the archdiocese of San Salvador, the Tutela Legal, are people who are deported back here faced with lots of violence? Do they tend to end up dead? Is there any substantial portion of them which meets with violence?

The answer is no. And, again, these are people who really ought to be closer to the situation even than the American human rights groups and the American groups which are asking for EVD.

It is an interesting insight; again, I do not put this forward as science, but I put it forward as evidence. ICM meets 42 flights a week that land now at the San Salvador Airport. TACA, the Salvadoran airline has 21 flights a week from the United States to San Salvador. Try to get a seat on one. They are overbooked.

Now, 21 flights a week comes to about 4,000 seats a week. Sure, they are not all Salvadorans; some of them are Americans. But a lot of them are Salvadorans going back to El Salvador voluntarily. And, again, that does not count the other flights. ICM meets 42 flights a week landing in El Salvador, some directly from the United States, others having stopped in Belize or someplace else, all booked with hundreds of Salvadorans returning home each week, some permanently, some just going home for vacation or to see their families, voluntarily.

It just does not square with the notion that all Salvadorans live in terror of going back to their country. It just defies logic. The only thing I guess I would add at this point is that we are often asked—what is our policy toward applicants from El Salvador, asylum applicants? As we review the applications and try to give a recommendation to Commissioner Nelson and the Immigration Service, what policy are we following? How is it that we produce the figures that we do produce?

And the answer really is, as I tried to say in the written testimony, we do not have an asylum policy. We do not have an asylum policy with respect to any country. All we try to do is to fulfill the demands of the legislation, and sometimes it produces a higher figure and sometimes it produces a lower figure, most often for most countries a pretty low figure, 20 percent, 25 percent across the board and significantly lower than that for El Salvador.

I take that as some kind of signal that my time is up, so I will stop there. Thank you.

[Statement follows:]

PREPARED STATEMENT OF
ELLIOTT ABRAMS
ASSISTANT SECRETARY OF STATE FOR
HUMAN RIGHTS AND HUMANITARIAN AFFAIRS

Mr. Chairman and members of the Subcommittee:

I am grateful for this opportunity to appear before you today.

As every member of the Subcommittee knows, El Salvador remains a deeply troubled country, but one in which extraordinary political progress is being made. The recent March elections represent yet another step in a five-year evolution as a democratic nation. The country still suffers from a dedicated Marxist insurgency in which guerrillas are actively engaged in terrorist attacks, but the Duarte government is working to end the violence through dialogue within the framework of the 1983 Constitution. Serious human rights abuses have obviously not disappeared, but disappearances and death squad assassinations have been significantly reduced. By anybody's standard, violence has dropped - from a high of 9,000 civilian deaths in 1980 to 771 in 1984, as reported by the press. Although severely depressed, the economy showed a small increase in the gross domestic product in 1984.

Meanwhile, the steady migration of Salvadorans to the United States continues, and from an estimated 300,000 here before the violence broke out in 1979, there are an estimated 500,000 here today. The United States is thus confronted with a number of significant immigration issues regarding El Salvador. Who are the migrants? Are they refugees, or are they motivated solely by economics? How do we deal with the asylum applications? For those not entitled to asylum, how do we respond to their desire to live in the United States?

The asylum issue is in a sense an easy one. The Immigration and Nationality Act implements the U.S. obligations under the 1951 Convention and 1967 Protocol Relating to the Status of Refugees. Our law set forth the standards by which an asylum application must be judged. The Attorney General may grant asylum if he determines an alien in the United States meets the definition of a refugee, that is, a person who has fled his country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group or political opinion. We apply these standards fairly. In fact, only a limited number of aliens, irrespective of their nationality, can meet them. This is true of asylum applicants from El Salvador. This has occasioned much criticism of the Administration's asylum policy toward El Salvador, but in fact we have no "asylum policy" toward El Salvador or any other country; we apply the same standards to each. Recommendations for the approval of applications from Salvadorans and Nicaraguans both run at a relatively low rate. This reflects no policy decision, nor does it reflect the state of our bilateral relations with either government; it simply reflects the fact that all asylum applicants must meet the same legal standards in order to be granted asylum. We are well aware that much criticism could be ended were the number of Salvadoran asylum approvals higher. But, to approve asylum applications for partisan political reasons would ignore the law. We recommend in favor of applications that meet the standards and against those that do not. And although the percentage of approvals for asylum claims is only three percent, El Salvador in fact ranks fourth in the world in terms of actual numbers approved.

The argument is then made that all Salvadorans, even those who do not qualify for asylum, should not be deported to El Salvador but rather allowed to remain here. As you know, the Administration does not concur with this view even if it were only a temporary suspension. All suspension of deportation decisions require a balancing of judgments about several factors, including foreign policy, humanitarian, and immigration policy implications.

In the case of El Salvador, the immigration policy implications of suspension of deportation are enormous. Here we have a country with a history of large-scale illegal immigration to the United States. Can anyone doubt that a suspension of deportation would increase the amount of illegal immigration from El Salvador to the United States? An intelligent and industrious Salvadoran weighing a decision to try illegal immigration to the United States knows that one of the risks is deportation, which might occur before he has had a chance to earn back the costs of the journey. If we remove that possibility of deportation, it is logical to suggest that illegal entry becomes a more attractive investment.

There is reason to think that the "magnet effect" would be overwhelming. In a Spanish International Network exit poll last month, 67% of Salvadorans responded "yes" to the question "Would you emigrate to the United States?". Over $30 million per month is sent home from Salvadorans working illegally in the United States. In addition, the vast majority of Salvadorans who do file for asylum allege no fear of persecution but state that they came to the United States to work. The evidence simply does not indicate that most Salvadorans are here in this country to escape persecution.

Of course, some Salvadorans are refugees who may be and have been granted asylum, and they do not need suspension of deportation to be protected. So, by definition, when we discuss suspension of deportation for the group which is not eligible for asylum, what we are discussing is whether people who emigrate from El Salvador to the United States illegally, for reasons other than fear of persecution should be permitted to reside here. If one says yes to this question then we do not have an immigration policy with regard to El Salvador. We have abdicated the responsibility to have one.

It was our country's ad hoc approach to refugee flows that prompted the Congress to pass the Refugee Act of 1980. It was the specific intent of the Congress to end nationality-specific measures that provided benefits for persons from one country and left other persons with similar claims in limbo. It was also the Refugee Act that incorporated the 1951 Convention's definition of a refugee into our law. Under that Act each asylum application is to be examined on an individual basis.

Legally and morally, the distinction between economic migrants and political refugees matters greatly. The United States has undertaken the protection of refugees, but has not agreed to accept for permanent residence every illegal immigrant who reaches our shores. There is no such thing as a "self-appointed refugee." Each person who seeks the protection of the United States must apply for asylum, and each application is examined on a case-by-case basis to see if it meets the standard of law. Asylum is a special and narrow exception to our laws, and not meant to be an extra immigration program. We grant asylum only when someone can show a well founded fear of persecution if he or she were to return home. Under our laws, generalized conditions of poverty and civil unrest do not entitle people who leave their homelands to settle here. If this were our test, half the 100 million people living between the Rio Grande and Panama would meet it, as would hundreds of millions more people in other parts of the Earth.

Some people argue that it is too hard for Salvadorans to be granted asylum, and therefore Americans who support them are morally bound to break the law. But the United States is an incredibly generous country, admitting 430,000* persons under regular immigration procedures, plus 70,000 refugees worldwide in this Fiscal Year alone. This country does not deserve the abusive rhetoric that has become standard fare from those who evade the very system established to protect those who need protection the most. The notion that the only way to stay in this country is to enter illegally and break the law once you are here, is simply not valid. The United States issued over 8,000 immigrant visas to Salvadorans last year in addition to 328 approvals on asylum claims.

Some groups argue that illegal aliens who are sent back to El Salvador meet persecution and often death. Obviously, we do

*270,000 Regular Immigrants
160,000 Immediate Relatives - spouses, children,
parents of citizens

not believe these claims. If we did, we would not deport these people back to El Salvador. Twice, in recent years, the United States Embassy in San Salvador has made attempts to track deportees and see if they were being persecuted; we concluded that they were not. In February we asked the Archbishop and Tutela Legal, the human rights office of the Archdiocese of El Salvador, whether they believed there was a pattern of persecution of deportees. They replied that they did not.

It is noteworthy that these accusations of abuse toward deportees are lodged by some American activist groups critical of United States policy in El Salvador. They find no echo or source in complaints from Salvadoran human rights groups, which have never made this claim. And that stands to reason. El Salvador is a country, as noted above, in which emigration abroad is a common and respected means of self-improvement, and it would be odd to think that this action engaged in by hundreds and thousands of Salvadorans, by perhaps a quarter of the population, was viewed by anyone as proof of a suspicious association. We have interviewed deportees at the airport, in the Embassy, and after they have returned to their homes. We have never met anyone who thinks he is a target because he has been deported from the United States. Surely there must come a time when any fair-minded observer concludes that this alleged pattern of wide-scale abuse of deportees is just a fiction unsupported by evidence.

Many Salvadorans are told that they will be deported into the hands of the military, and are sold a gruesome picture of the United States "dumping" them at the airport. In truth, no one is "dumped" at the airport. There is now a program in place conducted by the Intergovernmental Committee for Migration (ICM), a highly respected international organization. ICM meets every Salvadoran who has been sent home by the United States. Each is offered assistance in meeting up with family members, each is given a temporary I.D. if needed, given money for travel home, or a place to live if the individual does not want to go to his hometown or village. Each has explained to him the assistance programs of the

Salvadoran government and church so that he or she may gain their benefits. Each person is invited to send in a questionnaire every month for six months after he has returned to his home, describing any difficulty that he or she may encounter. If a returnee does not send in his questionnaire, ICM sends a reminder letter. If they still do not hear from the returnee, they follow up with a field interview. ICM has not reported a single case of a deportee who was killed or disappeared.

Let me give you a rough "profile" of those returned from the United States between December and February: ICM met 794 returnees - deported Salvadorans, voluntary returns, and excludables. Of the 794, 688 were male, 624 were single, and 716 were over the age of 18, generally between 18 and 35. With this profile, one need not wonder why Salvadorans receive over 30 million dollars each month from their relatives in the United States. One need not deny there is a tremendous economic incentive to come here.

In conclusion, I do not believe that the appropriate response to the problems of poverty or violence in El Salvador is to allow any Salvadoran who wishes, to simply live in America instead - any more than I think this is true for Guatemala, or Haiti, or Nicaragua, or Sri Lanka, or Afghanistan, or Iran, or Uganda, or Ethiopia, or Lebanon, or Vietnam, or Zimbabwe. My point, of course, is that in a very large number of countries millions of people, and indeed, tens of millions, face lives which any American can only view as desperate. How do we respond? We respond with our willingness to allow hundreds of thousands to legally immigrate to the United States. We respond with our asylum and refugee programs, which are the most generous in the world. We respond with our foreign aid program. And we respond with various political and diplomatic efforts to resolve disputes and reduce violence. It does not seem to me that a sensible response can be to say that all these people, if they can make it to the

United States, can stay. We can and we must do very many things to address the urgent and desperate humanitarian needs of tens of millions of people throughout the world, but one thing we really cannot do for them all is tell them to move to America.

I therefore respectfully suggest that the current policy is an appropriate one, combining large amounts of economic assistance, energetic diplomatic efforts, and the grant of asylum to those with a well-founded fear of persecution.

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REPORT ON THE SITUATION IN EL SALVADOR

DEPARTMENT OF STATE
WASHINGTON, D.C.

FEBRUARY 1 - MARCH 31, 1985

REPORT ON THE SITUATION IN EL SALVADOR

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I. EXECUTIVE SUMMARY

The period of this report was highlighted by the Salvadoran elections for the Legislative Assembly and municipal councils on March 31, 1985. Successful conduct of these elections in spite of guerrilla attacks complete a three-year process to establish a fully representative government in El Salvador. Human rights observance and efforts to address the critical economic situation and to advance judicial and land reforms continue to show progress.

The report's major findings are:

Free Elections: The democratic electoral process begun in 1982 culminated in the March 31 elections for 60 Legislative Assembly deputies and 262 mayors and municipal councils. Over 1.15 million Salvadorans voted in the presence of 350 international observers and foreign press who commended both the voting process and the effective impartial protection of the security forces. Guerrillas disrupted road traffic, burned 26 town halls and assassinated political figures and civil defense volunteers in an unsuccessful effort to obstruct the elections. Balloting took place in all but 21 municipalities, as compared with 43 towns where guerrilla attacks kept voting from taking place last May. Election results released April 25 show the Christian Democrats won 54 percent of the vote. The Central Elections Council rejected a maneuver by the conservative opposition coalition to nullify the elections.

Peace Process: The peace theme was cited by voters, observers, Salvadoran church leaders and President Duarte as the key to the Christian Democratic election victory. President Duarte pledged to pursue the peace process and called upon all parties to make constructive efforts to end the conflict. He restated his goals to humanize the war by lessening its destructive effect on the civilian population and to reincorporate the guerrillas and their political allies into the political process. At the same time, Duarte rejected being drawn into a tactical dialogue over guerrilla proposals which violate the Constitution.

Observance of Human Rights: Politically-motivated deaths over the period of this report remained at historically low levels. Assassinations attributed to the extreme left, however, figured prominently in violence statistics compiled by the Embassy. Guerrilla efforts to disrupt the elections and the armed left's tactical shift toward urban terrorism are among the factors cited for the surge in leftist violence. Church and international human rights groups acknowledged the improvement in human rights observance in El Salvador, including the reduction in illegal detentions and disappearances, arrest procedures adopted by the security forces, and military compliance with rules of engagement designed to minimize civilian casualties in the war against guerrilla forces.

Administration of Justice: Progress on the reform of the Salvadoran judicial system was slowed during this period by partisan disagreements which intensified in the weeks prior to the March 31 elections. Nevertheless, the Duarte administration continued to seek to implement its proposals for reforming the administration of justice. Recent government efforts focussed on securing Supreme Court agreement on its participation in the Revisory Commission and in drafting interim regulations so that the investigative unit of the planned National Criminological Institute can begin operating. President Duarte emphasized that the reform of the justice system will be a priority for the new Legislative Assembly when it takes office in May.

Military and Security Issues: Evidence of the military's improved ability was demonstrated in its success in maintaining the security needed to permit voting in all but 21 municipalities during the March 31 elections. The dispersal of guerrilla concentrations in previous strongholds and the inability of rebel forces to mount major military attacks also attest to increasing military effectiveness in the field. The guerrillas increasingly are returning to economic sabotage, ambushes and urban terrorism. The National Plan, a coordinated action effort between civilian and military authorities to restore services in secure areas, has been revitalized and expanded from two to nine of the country's 14 departments.

Economic Development: The positive trend established in 1984 toward economic recovery has continued into early 1985. Stimulated by increased private investment and U.S. economic assistance, El Salvador's GDP may grow by 2 percent in 1985. The recovery, however, remains weak, with world prices for El Salvador's export crops low. In addition, the need to finance the costly war effort as well as to meet critical social and economic needs strains limited government resources. The government's post-election recovery efforts will focus on the need to reactivate the economy, reduce the budget deficit and prevent further deterioration in the balance of payments.

Land Reform: Priorities of the five-year-old land reform program include resolution of the remaining titling/compensation cases within two years, completing compensation and interest payments coming due this year and restructuring the agrarian debt. Phase I implementing agency ISTA is working on reactivating abandoned Phase I farms as the government establishes control in contested zones and on improving management and productivity.

Refugees and Displaced Persons: The number of Salvadoran refugees voluntarily returning to El Salvador appears to be rising. The UNHCR reported 2257 Salvadoran refugees in Honduras requested and received UNHCR assistance to repatriate in 1984, as compared with 502 in 1983 and 24 in 1982. The UNHCR and the governments of El Salvador and Honduras met in mid-February to form a tripartite commission to set up and coordinate a voluntary repatriation program.

II. POLITICAL AND JUDICIAL DEVELOPMENTS

A. Free Elections

El Salvador successfully carried out its fourth election in three years on March 31, 1985, when voters went to the polls to select representatives to the 60-member Legislative Assembly and 262 municipal councils. Despite guerrilla attacks, an estimated 1.15 million Salvadorans turned out to vote. Security was tight but low-key and voting took place in all but 21 municipalities, as compared with 43 where voting could not take place in the presidential elections last May. The balloting was witnessed by more than 150 foreign observers and 200 representatives of the international press who universally pronounced the process free and fair.

The March 31 elections marked the culmination of a process begun in 1982 to establish representative government in El Salvador. Three years ago, 1.5 million Salvadorans elected a 60-member Constituent Assembly to develop a new national constitution, which was adopted in December 1983, and to serve as an interim legislature. Shortly after taking office in 1982, the Constituent

Assembly appointed mayors and municipal councils equally divided by mutual agreement among the three major parties, the Christian Democrats (PDC), Nationalist Republican Alliance (ARENA) and National Conciliation Party (PCN). In 1984, the citizenry again went to the polls in large numbers, on March 25 and again on May 6, to select their first freely-elected president in more than 50 years. Christian Democrat Jose Napoleon Duarte won in the run-off with 54 percent of the popular vote and was inaugurated on June 1, 1984. With the inauguration of the newly-elected assembly deputies, mayors and municipal councils in May 1985, El Salvador will have in place its popularly elected presidential, legislative and municipal leadership for the next three years.

The conduct of the March 31 elections demonstrates the progress made by El Salvador in establishing a system of pluralistic representative democracy in a short period of time and against formidable odds. Since the early 1980s, externally-supported armed insurgents and their political supporters from the extreme left have sought to obstruct and frustrate the elections process, demanding instead that power be shared based on military force. Despite guerrilla opposition, the Salvadorans have succeeded in establishing an elections process internationally recognized as open and honest. The right of all registered parties to participate, campaign freely and enjoy access to the media is guaranteed under the 1983 constitution and the electoral law adopted in February 1985. Nine parties ranging from the moderate left to far right participated in the March elections. Two extreme left-wing parties, whose leadership supports the armed insurgency, were officially registered but declined to field candidates despite the government's offer of political guarantees to enable all to compete openly in the electoral process. At considerable sacrifice, the military committed its resources and refrained from voting in order to protect the elections process and to ensure the widest possible participation while avoiding any taint of military interference. Voter turnout in strong numbers reaffirmed the Salvadorans' commitment to participatory democracy.

Another sign of how democracy is taking hold in El Salvador was the prompt rebuff of a post-election maneuver by the losing right-wing coalition to annul the election results. The Central Elections Council (CCE) on April 3 unanimously rejected a petition from coalition partners ARENA and PCN demanding that the election be voided due to alleged campaign and voting irregularities. Earlier that day, the military high command publicly rejected ARENA charges that it had influenced the vote to favor the ruling Christian Democratic party and vowed to uphold the results. The right-wing charges erupted after reliable post-election projections showed the PDC had won an impressive victory. ARENA provided few examples to support its allegations and comments from hundreds of international observers and press reported no evidence of manipulation or military interference. Salvadoran law provides for repeat balloting in municipalities where the CCE rules that irregularities or guerrilla disruption of the vote invalidate the results. The official vote count, delayed by the ARENA/PCN challenge and Easter holidays, resumed on April 8.

As attested to by foreign observers, the CCE ran a well-organized election program with strict controls to avoid fraud or voter manipulation. Each voting table was manned by polling officials from the three major parties as well as by poll watchers from other participating parties. At the polling place, each voter had his name and identity card number checked against the alphabetized electoral register and his identification confirmed before receiving two ballots, one each for the Legislative

Assembly and the municipal elections, marked with the symbols of each of the participating parties. The voter marked his vote at a stand with raised sides which shielded his ballots from view, then placed his folded ballots in a transparent plastic receptacle directly under the voting stand. The voter's identity card was then marked and his finger dipped in indelible ink to prevent multiple voting.

Occasional administrative difficulties--tardy or misdelivered elections materials, confusion over name identification on the alphabetized electoral registry--caused delays and crowding at some voting locations, particularly in the early morning hours. Problems, however, were amicably resolved by polling officials on the spot, according to observers. The Palm Sunday election day atmosphere was festive and relaxed and voting in most locations was largely over by mid-day.

After the polls were closed, polling officials jointly conducted the vote count in full view of poll watchers and international observers. The vote count for each party, as well as that of spoiled, doubtful, or blank ballots was recorded on an election document. The document and ten copies were signed by each of the polling officials and poll watchers and each received a copy. The election documents and sealed packages of the actual ballots were then forwarded to the municipal electoral boards, who passed them to the department election boards, who in turn forwarded them to the CCE in San Salvador to conduct the final tally and announce the official results. Unofficial results compiled and released by the parties were based on copies of the election documents provided to each poll monitor.

More than 150 international observers from 40 countries extensively witnessed the elections and pronounced them free and fair. Observers commended particularly the orderliness of the elections process and the impartial security provided by the armed forces. Ecuadorian observer Jorge Vivanco Mendieta noted that "more than 200 representatives of newspapers from all over the world observed this democratic act that took place as an example of tranquility, order and faith in the system." The Washington Post commented that "observation indicated that all parties cooperated in monitoring polling sites across the country and that the armed forces remained neutral. This fourth election in three years was by far the most peaceful, with the army out in force." Additional observer/press comments on the elections are contained in Appendix A.

The U.S. delegation, which included members of Congress and prominent private citizens, visited nearly 30 towns throughout the country, including several places where guerrillas had prevented voting in 1984. The bi-partisan delegation unanimously hailed the elections process as "fair, open, and encouraging as a symbol for the future of democratic institutions in El Salvador." The text of the U.S. observer delegation's statement is contained in Appendix B.

Salvadoran Archbishop Rivera y Damas commended the elections in his homily the following Sunday: "For the fourth time, the people have shown their faith in the elections and have demonstrated not only a popular wisdom that abounds in good sense but also their civic maturity and political good judgment." According to the Archbishop, the election, "in spite of its defects and difficulties, and the threats and crimes of the guerrillas, is considered by Salvadorans and by foreign observers as hotly contested, free, clean and relatively peaceful."

Voter participation of 1.15 million, or about 64 percent of the electorate, was below the historic 80 percent levels in the 1984 presidential rounds. The drop is attributable to several factors, including the requirement that voters physically vote in the municipalities where they are registered. (Non-resident voters could vote at "national" tables in last year's presidential elections.) The new electoral law imposes no fines on those who fail to vote. The guerrilla travel ban and harassment were cited by polling officials as the major factor impeding voters from reaching their voting locations. Other factors were early departures for Easter holidays and lowered interest in non-presidential elections.

Guerrillas once again mounted a major campaign to disrupt the elections. Attacks on vehicles and roadmines kept many people, particularly in rural areas, from reaching their polling locations. A guerrilla-detonated bomb destroyed a bus in Chalatenango department the day before the elections, killing six and wounding 11. In Usulutan, a five-year-old girl and an elderly woman were killed by a mine while walking along a road. On election day, guerrillas machine-gunned a car in San Miguel, killing a seminarian and wounding a priest. The insurgents also destroyed electrical lines and power stations throughout the country. In the weeks preceding the elections guerrillas burned down 26 town halls, destroying civil records, and killed and kidnapped party workers, political candidates and civil defense volunteers in an avowed effort to dissuade people from exercising their right to vote.

Notwithstanding the guerrilla attacks, an aggressive military campaign to protect the elections permitted voting to take place in all but 21 of the country's 262 municipalities, as compared with 43 towns where voting could not be secured last May. Where guerrilla control or depopulation of municipalities did not permit local balloting, voting was arranged at the nearest secure location. On election day, the armed forces, who did not vote, provided visible but low-key security, maintaining some distance from the voting tables. Observers and press reported no signs of coercion or intimidation on the part of the military or security forces.

The Farabundo Marti National Liberation Front (FMLN) predictably repudiated the elections as a useless "farce" based on fear and pressure. In a statement issued over clandestine Radio Venceremos, the FMLN and its political arm, the Revolutionary Democratic Front (FDR), rejected the tenet that power is derived from free elections. "It is clear that the true power factors for our people are not the votes or elections but the workers' army and the ability for organization and struggle of the popular movement represented by the FMLN-FDR. Our arms are the true guarantee for peace with justice." With equally curious logic, the guerrillas boasted of the effectiveness of their travel ban, blackouts and urban terrorism in obstructing the elections, then criticized the elections for higher rates of absenteeism as compared with last year.

Final election results released on April 25 confirmed earlier projections showing President Duarte's Christian Democrats won 54 percent of the the vote, up from 40 percent in the 1982 assembly elections. The conservative ARENA-PCN coalition received 37 percent of the vote, with ARENA taking 29 percent (the same as in 1982) and the PCN dropping sharply to 8 percent (from 18 percent in 1982). The results give 33 seats to the PDC; 25 seats to the ARENA/PCN electoral coalition (under the terms of the coalition, ARENA will get 13 seats and the PCN, 12); and one seat each to PAISA, a PCN splinter formed after the 1982 elections, and the Democratic Action Party, a centrist party allied with the PDC. PDC has also apparently won as many as 200 of the country's 262 mayoralties. The winners received their credentials from the CCE on April 29 and will take office on May 1, as mandated by the constitution.

President Duarte said the PDC victory demonstrated the people's desire for peace and support for his program of democratic reforms. He encouraged other parties to join in a broad "social pact" to confront the country's critical economic problems and contribute to the process of national reconciliation. Duarte has offered to include in his government those who support his goals to further democratic institutionalization, human rights observance, judicial and agrarian reform, equitable economic development and the peace process.

B. Peace Process

Peace was a major theme in the March 31 elections. President Duarte credited his peace initiative as the decisive factor in the PDC victory. International and media reaction characterized the results as a vote for peace. The Los Angeles Times declared that the PDC upset "shows how effectively Duarte captured the imagination of his people last October when he dramatically offered to begin peace talks with the guerrillas fighting to overthrow his government." The Swiss Tribune de Geneve concluded the voters wanted "to strengthen Duarte's hand in his quest for peace." Archbishop Rivera y Damas hailed the elections as "a hopeful sign which will facilitate the road to peace."

President Duarte remains firmly committed to the peace process. He launched the dialogue in La Palma on October 15 with an offer of political and security guarantees to the armed left to rejoin the political system. At the next round of talks in Ayagualo on November 30, the FDR-FMLN countered by repeating earlier demands for power-sharing and territorial demarcation. President Duarte rejected these demands as unconstitutional and insisted he would not be drawn into a tactical dialogue. The government decided to postpone further talks until after the March 31 elections in order to consolidate public support for the peace process and to avoid political polarization in the pre-electoral period. Duarte stated publicly the day before the elections that he would resume talks with the FDR-FMLN after the elections, regardless of the outcome. He further declared that his willingness to seek dialogue and ways to humanize the war would not end until the rebels were reincorporated into the democratic process. The FDR-FMLN has accepted Duarte's call for renewed dialogue.

While formal talks were not held during the 60-day period of this report, Duarte on several occasions prior to the elections reiterated his October 15 offer of political and security guarantees to the democratic left to enable it to rejoin the electoral process. Earlier hints from some FDR-FMLN leaders that certain factions were considering participating in the elections proved illusory and Duarte's offers were met with renewed violence on the part of the the armed left, particularly urban assassinations. Informal contacts were nevertheless maintained, largely through the confidential channels of Archbishop Rivera y Damas in his role as mediator. Guerrilla forces, for example, heeded a request not to obstruct a nation-wide vaccination campaign for Salvadoran children initiated in early 1985.

C. Observance of Human Rights and the Rule of Law

Political violence figures compiled by the U.S. Embassy from Salvadoran press accounts, guerrilla claims aired over their own media, and other sources remained at historically low levels during the reporting period. Assassinations attributed to the extreme left, however, figured prominently in the totals of politically-motivated deaths. For the period February 1-28, Embassy records identified 30 political, or apparently political, deaths. For March 1-31, the number was 21. Of this total of 51 deaths for the reporting period, 32 were claimed by the extreme left; another seven presented signs implicating the extreme left. None could be definitively attributed to the extreme right, while two could possibly be attributed to the extreme right. Responsibility for the remaining seven murders could not be attributed to either group. Three were civilians killed in combat crossfire. These totals compare to 35 politically-motivated deaths recorded by the Embassy in December 1984 and 37 in January 1985. A graph depicting the downward trend of political violence from 1981 to 1984 is contained in Appendix C.

The guerrillas' history of attacking the electoral process partly explains the upsurge in violence attributed to the extreme left. Assassination victims included seven, mostly ARENA, politicians. The FMLN's February 28 machine-gun attack on the home of the head of the elections council killed four persons. Army spokesman Ricardo Cienfuegos was murdered by Popular Liberation Forces (FPL) terrorists on a tennis court in San Salvador on March 7. Other leftist victims include businessmen, civil defense and security officers, and municipal officials. Rebel road mines and attacks on transport to keep voters from participating in the elections killed and injured innocent civilians. Another major factor in the rise in leftist violence was the guerrillas' tactical shift to urban terrorism in response to improved Salvadoran Armed Forces (ESAF) military performance in the field. This subject is discussed in Part III of this report.

A recent well-publicized example of guerrilla atrocities against civilians was the April 8 murder of 21 persons by guerrillas in the La Paz hamlet of Santa Cruz Loma (pop. 400), 35 kilometers southeast of San Salvador. That night, a large group of guerrillas wearing Salvadoran army insignia on their camouflage uniforms murdered the town's unarmed civil defense volunteers after dragging them from their homes. The guerrillas shot or slit the throats of their victims, whose hands were tied behind their backs, and burned to death a family of seven, including four children. Leaflets left at the scene indicate the FPL had targeted the town for its active civil defense program.

President Duarte's first nine months in office were largely concentrated on reasserting civilian authority and respect for the law and human rights. Progress made so far includes the decline in extreme right-wing political violence, successful conduct of the recent elections and the increasingly effective professional performance of the armed forces. These accomplishments have been recognized by local church and human rights groups, as well as by international organizations which monitor human rights observance. In its resolution on El Salvador adopted on March 13, the United Nations Human Rights Commission credited new government policy for the "sharp drop in the number of political assassinations, detentions and disappearances" in El Salvador over the last year. The resolution decried the continuation of war and generalized violence, including guerrilla attacks on life and the economic structure, and called for resumption of the peace dialogue and continued efforts to reform the legal system.

Salvadoran Church leaders and local human rights groups have confirmed the decline in extreme rightist death squad-type violence. They point out that the arrest and detention procedures instituted by the government to protect civilian rights are working well, reducing opportunities for abuses and reshaping perceptions by both civilians and security forces of the appropriate role of public security in a democratic system. As another step toward building responsible foundations to Salvadoran society, President Duarte announced on February 14 that ethics and civic education programs emphasizing respect for human rights would be reestablished in the country's schools. At the same time, he said that a document mandating human rights standards and practice had been issued to all branches of the armed forces.

Two cases which received widespread international attention as examples of government human rights abuses are, in fact, illustrative of the positive changes taking place in El Salvador:

Emiteria Acosta de Peraza, who allegedly "disappeared" on January 22, was legally arrested by the Treasury Police that day on charges of serving as a courier for an armed guerrilla group. In accordance with Salvadoran law, arresting authorities properly identified themselves to her at the time of her arrest and promptly advised the Salvadoran Human Rights Commission and the International Red Cross. (These two organizations may visit detainees and provide medical assistance, personal articles and other assistance.) Suspects arrested under the provisions of Decree 50 for terrorist acts or participation in terrorist organizations may be held for up to 15 days, by which time they must be turned over to the special Decree 50 judicial authorities or released. In the Peraza case, authorities concluded that the evidence indicated she had been unwittingly used by rebels to carry messages and she was released within nine days.

Refugee worker Jose Mario Gonzalez Castro was the subject of concern by international human rights groups after he was reported "missing". In fact, he was arrested by the National Police on Saturday, March 16 during a sweep in an area near a Catholic Church displaced persons refuge in San Salvador. That same day, authorities sent telegrams reporting the arrest to the Red Cross, the Salvadoran Human Rights Commission and the Archbishopric's legal aid office, Tutela Legal. After questioning, Mr. Gonzalez was released on March 19.

Due to the continuing guerrilla threat in El Salvador, the state of siege remains in effect, and full application of the rights of free assembly are technically suspended. Political campaigns and religious and civic events are exempted from the restrictions, however, and leftist groups enjoy considerable liberty to promote their positions publicly. The Mothers Committee, the non-official Human Rights Commission (CDHES), the Committee of Families of the Disappeared (CODEFAM) and the Independent Movement of Professionals and Technicians of El Salvador (MIPTES) run full page advertisements, organize demonstrations and sponsor events in which they demand compliance with guerrilla proposals to dissolve the government and its legal institutions. A regional "health" congress held in San Salvador March 5-6 published resolutions supporting the "armed struggle" and the aims of the Salvadoran insurgents. A mass sponsored by the Mothers Committee and CDHES on March 14 provided an opportunity to air unsubstantiated allegations of government abuses in the two year-old case of a CDHES militant killed in crossfire while traveling with a guerrilla troop. An advertisement published the same day impugned President Duarte's commitment to justice and charged the Reagan Administration's "regime of aggression" with thwarting justice in El Salvador.

D. Administration of Justice

During the period of this report the attention of both government officials and opposition party leaders was largely focused on the March 31 elections. Progress was thus slowed during the period in areas requiring agreement among the Christian Democratic executive and the opposition-dominated Legislative Assembly.

Two areas in which the Duarte administration has focused recent efforts to advance judicial reform are in securing Supreme Court agreement on its participation on the centerpiece of the reform effort, the Revisory Commission, and in drafting interim regulations so that the investigative unit of the planned National Criminological Institute can begin operating. The Executive Secretary of the Revisory Commission, Dr. Ernesto Criollo, has negotiated an agreement in principle between the executive and the court on a re-draft of the decree which established the commission. Supreme Court President Francisco Guerrero argued that the role of the court on the commission should be enlarged and, specifically, that two Supreme Court magistrates should serve on the commission instead of the one contemplated by the original decree. Working with Dr. Guerrero and the Minister of Justice, Dr. Criollo and other commission members reached agreement on proposed changes to the decree which should be acceptable to all parties. With the promulgation of the revised decree, the commission will be strengthened and its work advanced by the crucial support of the Supreme Court.

The Duarte administration has also sought to advance the establishment of the investigative unit of the proposed National Criminological Institute by drafting interim regulations for the unit pending passage of legislation establishing the institute by the Legislative Assembly. A series of discussions involving the Minister of Justice, the Vice Minister for Public Security and members of President Duarte's staff have led to a proposed interim arrangement which would allow the unit to begin its important investigative work. This effort has been drawn out by the need to develop a formula for ensuring that the investigative unit's work is judicially recognized. Lawyers for the Vice Minister of Defense for Public Security and for the investigative unit have worked to draw up a proposal which would give the members of the unit the authority to act as members of an auxiliary organ of the courts, an essential legal requirement if their investigative work is to be accepted as evidence in court. Their work resulted in draft regulations which are under review by the ministries involved.

The results of the March 31 elections will affect the prospects for implementation of the government's judicial reform proposals. In the post-election period President Duarte has emphasized that the reform of the justice system is a priority for his government and among the first tasks which the new Legislative Assembly will face when it assumes office in May. Thus, the changed political conditions in El Salvador following the elections are likely to result in more rapid progress in this area.

III. MILITARY AND SECURITY ISSUES

A. Performance of the Armed Forces

Military activity during the two-month period centered around elections security. The Salvadoran Armed Forces (ESAF) implemented a five-phase "Freedom Plan" in order to provide nation-wide around-the-clock military operations to protect the March 31 national elections. Aggressive patrolling by the armed forces was successful in dispersing guerrilla concentrations and ensured voting in a record 92 percent of the 262 cities and towns. (Guerrilla efforts to disrupt the elections are detailed in Part II of this report.) The armed forces' offensive posture during this period carried a heavy price: 71 men were killed and 146 wounded during the period February 25 to March 31. The military again refrained from voting in order to concentrate on its elections security mission.

The ESAF made effective use of the C-47 Airborne Fire Support Platform (AFSP) for the second time in a major battle on March 16. During a midnight guerrilla assault on the Picacho volcano communications facility, located on the outskirts of San Salvador, the C-47 proved to be a key factor in driving off a numerically superior insurgent force and in preventing substantial loss of ESAF lives and destruction of government installations. In addition to the protective firepower provided by the C-47 aircraft, the illumination provided by its flares was a valuable asset in keeping the battle areas lit and restricting guerrilla movements.

Increased training, delivery of new equipment, development and expansion of the civil defense program and strictly enforced observance of rules of engagement and of human rights have all contributed to the military's progress. Army units have demonstrated greater competence and initiative in maintaining a security presence in zones of conflict. The best evidence of the military's improved performance is the guerrilla shift in tactics from massed military attacks to reliance on small unit ambushes, land mines, and attacks on isolated army outposts and on economic infrastructure, particularly road and rail transport, electrical power stations and pylons, communications equipment, and coffee and cotton plantations and processing installations. The rise in urban terrorism and attacks on village civil defense volunteers also demonstrate shifts in the FMLN's military campaign.

The National Plan, a coordinated effort begun in June 1983 by military and civilian ministries to restore security and public services in areas of conflict, was reinvigorated under Salvadoran Vice President Rodolfo Castillo Claramount in December. It has since been expanded from two to nine of the country's 14 departments. The National Committee for Area Restoration (CONARA) has established department and municipal-level committees to ascertain and to set priorities for local needs. President Duarte reaffirmed his commitment to the goals of the plan at the swearing in of local committee members in Chalatenango on February 14. With the help of local currency funds generated through AID, program accomplishments to date include: 154 schools and five health posts reopened, 6000 jobs created, 181 public service projects completed, 95 housing units started at five abandoned Phase I farms, and $26 million in loans provided for private sector and agricultural restoration. During the 1984 Christmas truce, CONARA coordinated the distribution of medical assistance and 600,000 pounds of PL-480 food to 27,700 persons in 20 locations.

The reporting period saw the formal commencement on February 18 of basic combat training for new ESAF recruits at the Armed Forces Training Center (CEMFA), located near La Union. A total of 449 new recruits began a 15-week basic infantry course, with contingents of 250 men expected to commence similar training every two weeks until a ceiling of 1500 recruits in training is reached. The CEMFA will simultaneously conduct unit training for one light infantry battalion. In all, it can train a total of 2,000 men at one time.

B. Training of the Armed Forces

1. In-country Military Training Team (MTT) training completed during the reporting period:

    a. One battalion upgrade training
    b. Cadres trained from each of the 6 brigades in small unit day/night operations
    c. Program of Instruction preparation for basic recruit training at National Basic Training Center (NBTC)
    d. Rotary wing instrument instructor pilot training
    e. Air Force life support training
    f. Communications maintenance training
    g. Air Force avionics training

2. On-going in-country MTT training:

    a. One battalion upgrade training
    b Civil Defense cadre training
    c. Tactical intelligence training at brigades
    d. Navy training commandos, scout swimmers and small boat operations
    e. Marksmanship upgrade training
    f. Rotary wing pilot upgrade training

3. ESAF CONUS Training

    Personnel returned from training in CONUS:

    a. Officer/warrant officer rotary wing aviator training - 3
    b. Air command and staff college course - 1
    c. Coast Guard Officer Candidate School - 1
    d. Honor graduate cadet orientation training - 1
    e. USARSA training - 1

    Personnel departed for training in CONUS:

    a. Fixed wing pilot course - 5
    b. Advanced field artillery officer course - 1
    c. Defense security assistance management training - 1
    d. Air command and staff college course - 1
    e. Officer/warrant officer rotary wing aviator training - 4
    f. USARSA training - 1

4. ESAF Panama Training

    Personnel returned from training in Panama:

    a. Marksmanship Cycle II training - 60
    b. Marksmanship instructor course - 10
    c. Marksmanship Cycle III training - 69

    Personnel departed for training in Panama:

    a. Debriefing/document exploitation course - 20
    b. Inter-American Air Force Academy airborne/ground communications navigational equipment course - 3

C. Medical Training and Evacuation

Medical mobile training team IV arrived in country January 30, 1985, and began training in early February. The following training was in progress during the reporting period:

Combat medic refresher course
Clinical specialist course

Dental technician course
Dental laboratory course
First aid training for ESAF senior officers
protective detail

A total of 69 casualties were evacuated through the aeromedical evacuation system during the reporting period.

D. Ammunition, Weapons and Combat Support Equipment Losses and Expenditures

Lost/Destroyed Equipment	Feb 85	Mar 85
M-16/AR-15 rifles	16	30
G-3 rifles	0	11
90mm recoilless rifles	0	1
81mm mortars	0	0
60mm mortars	0	0
M-60 machine guns	1	0
M-79 grenade launches	1	0
Radios	0	0

Captured Weapons	Feb 85	Mar 85
M-16/AR-15 rifles	34	84
C3 rifles	4	50
FAL rifles	7	14
Galil rifles	0	0
Checo rifles	0	3
Law anti-tank rockets	0	3
RPG-2 rocket propelled grenade	2	1
90mm recoilless rifles	0	1
81mm mortars	0	1
60mm mortars	0	0
M-79 grenade launchers	0	4

Usage Rates of U.S.-Supplied Munitions

	5.56mm	7.67mm	40mm	60mm	81mm
Feb 85	2,408,743	370,691	0	775	686
Mar 85	814,785	590,760	170	843	831

Spare Parts

The following amounts were obligated during the reporting period for spare parts and support:

Item	Value ($ million)
Aircraft spares	2.5
Weapons spares	1.1
Vehicle support	2.72
Commo spares	1.6

E. Tactical Communications Equipment

ESAF is continuing to study communications requirements to establish firm procurement guidelines. Hand-held radios are being considered for units at the company level and below in lieu of additional purchases of PRC-77 radios.

IV. ECONOMIC DEVELOPMENT

A. Economic Overview

The positive trend established in 1984 toward economic recovery appears to have been maintained during the first three months of 1985. Private sector investment, combined with sustained levels of balance of payments support provided by the U.S., were the key elements in the improving economic picture. The government predicts gross domestic product will grow by 2 percent in 1985, a target we believe is within reach.

Encouraging though these developments are, the economy is still very weak. Unemployment is estimated to be in excess of 30 percent. Moreover, El Salvador remains heavily dependent on traditional export crops, which are favorite guerrilla targets and whose markets are -- and will continue to be -- weak and erratic. Payments on official and commercial obligations will likely absorb over 30 percent of exports in 1985. The central government budget suffers from chronic imbalance; opportunities for raising additional revenues are limited, and social and economic services are underfunded due to the demands of defense spending.

The imbalances in the nation's economic accounts are not due to irresponsible economic management. On the contrary, in spite of the war, the government budget is still almost the same fraction of GDP as it was in 1980 and inflation is lower than in the first year of the conflict. The inflation rate, as measured by the CPI, was held at less than 13 percent last year and is projected to be only slightly higher this year. In January, the government moved receipts from cotton exports to the parallel market, continuing its policy of gradual depreciation of the effective value of the colon.

The government's recovery efforts for the remainder of 1985 are expected to focus on accelerating growth, while continuing to strive to reduce the budget deficit and prevent further deterioration in the balance of payments. In the wake of its impressive victory in the March 31 election, the Duarte Government will have greater flexibility in pressing ahead with needed economic policy initiatives. Particularly important will be the continued rebuilding of private sector confidence, providing adequate credit and access to foreign exchange to the private sector, restoring public services and increasing public sector investment, and establishing policies to diversify production and exports. Measures to address the budget and balance of payments deficits are also expected shortly.

B. Land Reform

El Salvador's historic effort to ensure more equitable distribution of land and agrarian wealth is now entering its fifth year. Since 1980, 789,000 acres, or about 23 percent of the country's scarce agricultural land has been redistributed under the Phase I peasant cooperative and Phase III "land-to-the-tiller" programs. Some 570,000 persons have benefitted, counting 95,000 direct beneficiaries and their families, who represent more than a quarter of the country's rural poor. A statistical breakdown of the beneficiaries, land affected, number of titles issued and compensation paid for both Phase I and III is attached at Appendix D. Under Phase II, landowners have until December 1986 to sell off property in excess of 605 acres, the maximum allowable per person under the December 1983 constitution. An estimated 50,000 acres of land may come available under Phase II for distribution on credit to as many as 13,000 beneficiaries.

Program goals currently underway include resolution of remaining titling/compensation cases, restructuring of the agrarian debt, reactivation of abandoned Phase I farms as the government establishes control in contested zones, and improved management and productivity.

The pace of titling and compensation for Phase I properties, which had slowed in 1984 during an ISTA revaluation of uncompensated farms, picked up sharply in early 1985. In the first three months of the year, 20 final titles were issued, for a total of 75. President Duarte has personally intervened, insisting at a national agrarian reform seminar in January that titling and compensation be completed within two years. A commission is currently developing proposals to comply with the President's request. ISTA is also committed to having 159 managers in place by June 1985, with the remainder to be assigned as soon as possible.

The most critical issue facing the Phase I program is how to handle the burgeoning costs of the reform program. Two immediate financial problems must be addressed. The first is to pay the cash indemnization portion on resolved but still unpaid compensation settlements, clear overdue interest payments on bonds and redeem those bonds coming due in May. Total estimated cost is nearly $88 million. The second is to come to grips with the cooperatives' debt service obligations now coming due on $800 million in agrarian land debt, emergency credits and accumulated investment and production loans since 1980. These payments are beyond the capability of as many as 95 percent of the cooperatives to pay.

The government is considering ways to ease the cooperatives' debt burden, which could include restructuring of the debt, a moratorium on payments due and improving the cooperatives' liquidity and earnings through administrative changes on their agrarian accounts. The Advisory Council on Agrarian Reform, an inter-agency policy-making body including government ministries, the Central Reserve Bank, Phase I Cooperatives Federation and three major farmers unions, has met weekly since September to focus policy decisions and coordinate efforts of the various entities involved in the reform. The council has made the debt issue its highest priority and is studying alternatives based on an AID-financed study of the agrarian debt.

C. U.S. Economic Assistance

The Administration's proposed FY 1986 program requests $350.6 million in economic assistance to El Salvador. This support is required to build upon the economic stabilization and political progress thus far achieved in El Salvador, and to achieve the economic, social and political recovery which is essential to long-term peace and stability in El Salvador and Central America.

Of the $350.6 million, $202 million in Economic Support Funds (ESF) is requested for balance of payments support to maintain the flow of essential imports and to keep the private sector functioning. GDP growth is expected to reach 2 - 2.5 percent in 1985. ESF will also continue to provide for the restoration and maintenance of public services damaged by guerrilla attacks and emergency employment programs.

The Administration's request for $89.8 million in Development Assistance funding is proposed to support industrial recovery, programs providing for consolidation of the agrarian reform program and increased agricultural credit, assistance to displaced families, technical assistance and provision of vital supplies for the health care system, scholarships and restoration of public education, programs supporting democratic institutions and other priority assistance efforts.

The Administration has proposed amending Section 620(g) of the Foreign Assistance Act to authorize the President to make available to governments assistance to compensate their nationals in accordance with a land reform program, if the President determines that monetary assistance for such land reform will further U.S. national interests. Such authority would permit the U.S. to help the Salvadoran government to alleviate the critical agrarian debt issue and thereby reduce the friction and disincentives which currently impede investment and productivity in the agrarian sector.

V. REFUGEES AND DISPLACED PERSONS

There are an estimated 60,000 Salvadoran refugees living in neighboring countries. About 19,000 live in camps established by the U.N. High Commission for Refugees (UNHCR) in Honduras. Another 2000 are supported by the UNHCR in Nicaragua, Costa Rica and Panama.

The rising number of Salvadoran refugees returning to El Salvador either independently or assisted by international agencies reflects the country's improving security and economic situation. The UNHCR recently reported that 2257 Salvadorans requested and obtained UNHCR assistance to repatriate from Honduras in 1984. This compares with 502 assisted repatriations in 1983 and two dozen in 1982. These figures do not include refugees who voluntarily return without UNHCR assistance.

To aid the growing number of potential returnees, the UNHCR and the governments of El Salvador and Honduras in mid-February discussed formation of a tripartite commission to develop a voluntary repatriation program. At that time, Salvadoran Foreign Minister Jorge Eduardo Tenorio restated publicly his government's "concern and steadfast commitment to welcome all Salvadorans who wish to return to the country, which is their national home and their place". The Salvadoran government has also established an inter-agency Commission for Refugees and Displaced Persons headed by the Foreign Ministry's Vice-Minister Ricardo Azevedo to coordinate efforts by the Ministries of Public Health, Interior, Defense, Agriculture and Public Works to assist in the resettlement of displaced and returning Salvadorans.

The number of Salvadorans internally displaced by the conflict is estimated at about half a million. Some live in camps for the displaced; others have settled in marginal communities around provincial capitals or joined family members living in secure areas. Nearly 400,000 of these are registered with the Salvadoran government's Commission for Displaced Persoms (CONADES). Others are registered with church and international refugee organizations. The International Red Cross provides assistance to 80,000 displaced persons.

The U.S.-funded Health and Jobs for Displaced Families program, begun as an emergency assistance program in 1982, is being increased by $60 million over the period FY 1984 through FY 1986. The project will expand job opportunities, health care and nutritional services to displaced persons, whether registered with CONADES or not. The U.S. government is also funding a pilot voluntary relocation program for displaced persons. Relocation services include assistance in obtaining land and resources to work in cooperatives on agrarian reform lands and development of self-employment programs.

APPENDIX A

EL SALVADOR ELECTION OBSERVERS' COMMENTS

Washington Post

Last Sunday's legislative and municipal elections' altogether admirable effect was to put into place, in a country wracked by war and economic ruin, the full forms of democracy...The manner in which the election was carried out was seen as reflecting a consolidation of the democratic process here...Observation of the voting indicated that all parties cooperated in monitoring polling sites across the country and that the armed forces remained neutral. This fourth election in three years was by far the most peaceful, with the army out in force.

Miami Herald

The government and people of El Salvador now have proven that if they have a chance for democracy, they will take their responsibilities seriously to try to make it work. No one should begrudge them help in that effort.

The week's events added up to a historic vindication for Duarte and his party and a stinging rebuke to the right by the voters, and more painfully, by the military. The vote also was another in a series of political embarrassments for the armed left. Salvadorans again ignored insurgent denunciations of the balloting to vote--albeit in reduced numbers--in the country's fourth wartime elections in three years.

New York Times

(The apparent PDC upset) may give new life and legitimacy to Mr. Duarte's efforts to wage the civil war humanely and to negotiate for its end, to guarantee human rights and to curb the warlords of both right and left.

Los Angeles Times

The fact that the Christian Democrats won in the face of difficult odds shows how effectively Duarte captured the imagination of his people last October when he dramatically offered to begin peace talks with the guerrillas fighting to overthrow his government.

Spain: Observer Carlos Alberto Montaner (Diario 16)

(The elections) were carried out fairly. The right is slowly learning to accept the rules of democracy's game.

Ecuador: Observer Jorge Vivanco Mendieta (Expresso)

More than 200 representatives of newspapers from all over the world observed this democratic act that took place as an example of tranquility, order and faith in the system...The triumph of the Christian Democratic party was full and clean and constituted a disappointment for the guerrillas (who desired a rightist victory to polarize the fight).

Austria: Observer Josef Hoechtl, International Democratic Union

Hoechtl said in a press conference that the 160 election observers agreed that the vote was the best prepared and organized since 1982; election fraud had largely been prevented by triple controls.

Italy: Observer Gilberto Bonalumi (CD, Chamber of Deputies Foreign Affairs Committee)

The results confirm (what was seen) on the part of all the observers, a clean and popular victory for the Salvadoran DC.

Panama: Official Observers Statement

We were witnesses to an electoral process notable for the people's interest in participating within a framework of order and civility, and in which the armed forces acted to protect citizens who went to cast their vote.

Ecuador: Observer Alejandro Carrion (El Comercio)

This triumph (of Duarte and the Christian Democrats) signifies that the Salvadoran people are united behind their President in the search for peace.

Canada: Ottawa Citizen (English-Language Daily)

The good news is that the elections were fairly peaceful...the bad news is that the anti-government forces continued to boycott the electoral process.

Brazil: O Estado de Sao Paulo

Democratic, free and clean elections (in El Salvador) show the supremacy of the Salvadoran regime over the Nicaraguan one.

Denmark: Information (Leftist)

The outcome of the elections is not only a victory for President Duarte and his party. It also means new life to President Reagan's Central American policy.

Switzerland: Tribune de Geneve

The voters want...to strengthen Duarte's hand in his quest for peace by giving him, in addition to the presidency, control of parliament and city halls.

Costa Rica: La Prensa Libre (Conservative)

Once again the Salvadoran people have insisted on peace and shown unanimity in favor of democracy. The guerrillas, in view of the repeated electoral opinion of the Salvadoran people, have no other choice but to follow the Colombian example. Subversion will have to lay down its arms and convert itself into a political movement.

Peru: El Comercio (Moderate)

The people turned out in massive numbers and showed that the elections were not any kind of farce, as the subversives tried to make people believe...The valiant example of the Salvadoran people should be an example of how one should act in order to preserve the system based on liberty.

By way of contrast, following are excerpts from the rebels' Radio Venceremos:

Elections were seen as a useless activity of no value to the people...In guaranteeing, with great sacrifices, this useless electoral event, the puppet armed forces attempted to demonstrate its control, just when the war, in its full intensity, has advanced to vital areas, in the capital city itself, as demonstrated by the deserted highways, continuous blackouts, guerrilla activities in the western sectors, lackeys being brought to trial, and other actions in the capital city.

What was the use of votes that citizens cast during the latest elections as the result of pressure, fear, confusion and deception? As long as the true power factors are not reorganized...there will be neither peace nor free elections in our country.

It is clear that the true power factors for our people are not the votes or elections but the workers' army and the ability for organization and struggle of the popular movement represented by the FMLN-FDR. Our arms are the true guarantee for peace with justice.

APPENDIX B

STATEMENT OF THE
OBSERVER DELEGATION OF THE
UNITED STATES OF AMERICA
TO THE EL SALVADOR ELECTIONS

APRIL 1, 1985

Yesterday we witnessed El Salvador's third national election in less than a year. The unanimous conclusion of this bi-partisan observer delegation of elected officials and private citizens is that the election was fair, that the election machinery was conducted efficiently, and that it represents a most encouraging symbol for the future of democratic institutions in El Salvador.

In all, this small delegation visited nearly thirty towns in most parts of the country. We spoke with election officials, candidates and most important, voters of all parties.

This election differed in several ways from those held last year. First, since this was not a vote for a nationwide candidate, voters were required to cast ballots in their home towns. Further, the penalty for not voting had been lifted. Other, mechanical changes were implemented as the country fine-tuned its voting procedures.

The delegation notes that the Salvadoran military took obvious pains to remain impartial ~~in~~ the contest. They were stationed well away from the polls, and refused to be drawn into political disputes.

Disagreements at the polls were, for the most part, inconsequential, and generally settled on the spot by representatives of the various parties. These disputes centered on mechanics and procedures of the elections, and we saw no evidence of intimidation or coercion that would raise a question of the fundamental fairness of the vote.

The mechanics of the election ran without serious incident. The Central Election Council deserves particular praise for its fine coordination of the process.

Guerrilla threats and attacks comprised the most serious challenge to voting. This delegation notes the inconsistency between the guerrillas' initial posture that the elections were meaningless, and their subsequent attempts to thwart the electoral process through violent intimidation. In spite of their attempts at intimidation, more municipalities were able to participate this year than last. Whereas 42 towns were unable to vote last time in the Presidential elections because of terrorist intimidation, only about half that number were denied the privilege of voting Sunday.

The contest itself, then, must be hailed as a free, open, and fair contest, and we expect all parties to respect the results.

El Salvador now has in place its Presidential, legislative, and municipal leadership for the next three years. This delegation recognizes the need for continued American support for El Salvador as she addresses her continuing economic and military problems through her democratic institutions.

The delegation was struck by the rather consistent answer we got t the frequently asked question, "Why are you voting?" The vast majority of voters' answers centered on the hope for peace, and the desire to live in tranquility.

In our meeting with President Duarte after the polls closed, he confirmed his commitment to peace by building confidence among his people, through judicial reform, agrarian reform, and economic development. In addition, he reaffirmed his commitment to make every effort to bring the guerrillas to the peace table, and to put an end to the random violence which has so torn this nation.

This delegation commends the great strides made in this nation. Nowhere are they more evident than in this election. We look forward to working with the people of El Salvador to build on this election, further nurturing her democratic institutions, and we call on all factions, regardless of ideology, to join in that process.

We would be remiss if we did not mention the outstanding job performed by outgoing Ambassador Tom Pickering. He clearly has performed his duties in El Salvador in the highest tradition of American diplomacy. We know that he will continue to make a positive contribution to U.S. foreign policy.

Our delegation unanimously agreed that this election could be described as routine even by the historical standards of elections in the United States. That speaks volumes of how successfully the recently planted democratic institutions in El Salvador have taken root.

OFFICIAL U.S. OBSERVER

DELEGATION

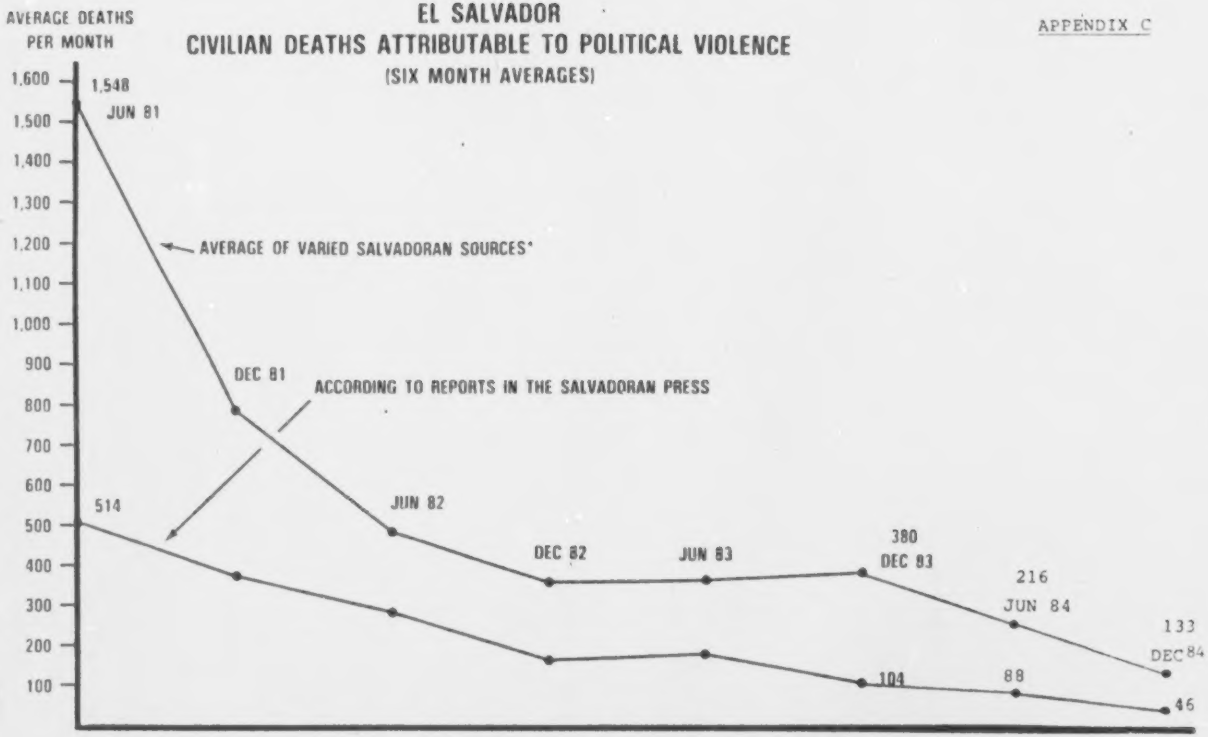
1. Congressman James R. Jones, Chairman
2. Congressman James Kolbe
3. Ambassador Angier Biddle Duke
4. Mr. Maurice Sonnenberg
5. Rabbi Morton Rosenthal
6. Mr. Howard Penniman
7. Mr. Howard K. Smith
8. Mr. Max Singer

March 31, 1985

APPENDIX C

EL SALVADOR
CIVILIAN DEATHS ATTRIBUTABLE TO POLITICAL VIOLENCE

(SIX MONTH AVERAGES)



* SOCORRO JURIDICO
COMIS
UCA
TUTELA LEGAL

NOTE: UCA, the Jesuit-run Central American University, stopped compiling these statistics after their June 1984 report.

Tutela Legal figures were unavailable for Nov. & Dec. 1984, but were weighted by past reportings

APPENDIX D

EL SALVADOR AGRARIAN REFORM DATA
(through March 1985)

PHASE I:
(properties in excess of 1250 acres)

Direct Beneficiaries	31,359
Including Families	188,154
Land Affected (acres)	548,809
As % All Farmland	15.27%
No. of Cooperatives	317
Properties Affected	472
Properties Compensated	271
% Properties Compensated	56.78%
Compensation Paid	$169,624,793
Cash	$12,469,233
Bonds	$157,155,560
Titles Issued	75
Total estimated agrarian debt:	$800,000,000

PHASE II:
(properties between 605 and 1250 acres)

The Salvadoran Constitution of December 1983 set 605 acres as the maximum amount of land any individual can own. Landowners have until December 1986 to sell off land in excess of 605 acres or holdings over the limit will be expropriated without compensation.

As much as 50,000 acres of land may become available under Phase II for redistribution on credit to an estimated 13,000 direct beneficiaries.

PHASE III:
(land-to-the-tiller)

Beneficiaries	63,668
Including Families	389,862
As % of Potential	54,42%
Land Affected (acres)	240,054
As % All Farmland	6,68%
Petitions Filed	79,142
Titles Issued	
Provisional	64,979
Definitive	13,105
Owners Compensated	1,145
Amount Paid	$17,363,218
Affected Parcels	19,827
Voluntary Payments	
Beneficiaries	36,215
Amount	$2,269,571

Senator SIMPSON. I think that is the most robust signal I have ever heard in this place, I will tell you that. [Laughter.]

Well, thank you very much. Now, Commissioner Nelson, please.

Commissioner NELSON. Thank you, Mr. Chairman and Senator DeConcini. It is a pleasure to be before you again and with that loud bell I guess we will all have to be very atuned to stopping on time. As with Secretary Abrams, I would like to submit our testimony for the record; I will read a couple of comments and summarize others.

The administration, with all due respect to Senator DeConcini, does oppose S. 377. We believe this bill is not only unnecessary, but even more significantly, that it does undermine the comprehensive and orderly system covered by the Refugee Act of 1980, as well as the entire immigration system covered by the Immigration and Nationality Act.

We believe this bill accomplishes nothing that cannot better and more equitably be done under the existing Refugee Act of 1980. In this regard I would like to focus on two issues. The first concerns the reason why the Refugee Act of 1980 should not be circumvented, and the second, to follow along with some of Secretary Abrams' comments, is going through the procedures for handling asylum claims, which I think relates specifically to the issues covered by this bill.

In summary—and we cover this extensively in our written testimony—Congress passed the Refugee Act of 1980, to supplant the piecemeal and nation-specific legislation and parole programs under which refugees had been admitted to the United States in previous times. And I think we have all recognized many of the problems that have come from some of the parole policy use and not using the statute. So this bill was passed just 5 years ago to supplant this piecemeal system, to establish a comprehensive system for all refugees and to be sure that there is individual consideration on the merits.

Now, unfortunately, S. 377 would return us to this ad hoc and discriminatory approach of the past. It would create a special class of just Salvadorans, and just those that are here already; ironically, if there is danger down there, it would be the people down there that you would want to deal with more. Clearly, there is a very significant concern that we would increase the flow, maybe dramatically, if any Salvadoran that could just get here has the ability to stay even though it is supposedly only for several years.

So, we do believe, as we set forth in our testimony, that the Refugee Act is comprehensive and the legislative history as covered in this testimony, we think reflects that. It also was clearly to remove from the executive branch some of the discretion to use and abuse the parole authority, and we think that should stay. It covers the U.N. Protocol issues that have been alluded to a great deal. It establishes the comprehensive method. It applies to all persons. So, we think the Refugee Act of 1980 is the vehicle.

Let me now turn, Mr. Chairman, to the asylum process. Obviously, many of the supporters of this EVD legislation claim that it is necessary because this administration purportedly discriminates against Salvadoran asylum applicants and, therefore, we must have a special bill such as advanced here.

I will in a minute, return to a couple of charts which I think illustrate what, clearly many people have not understood very well—and I would hope the media would make this clear—that we have a very thorough process for pursuing asylum claims. You have the Immigration Service that initially reviews these cases. We obtain the opinion from the Bureau of Human Rights and Humanitarian Affairs. Then, if they are denied, they have the right to go before an immigration judge, an independent administrative law officer, to present testimony, evidence. They have a right to counsel, to full judicial process. If they lose at that point, they go on to the Board of Immigration Appeals, an independent administrative appellate body. And, should they lose, thereafter they can pursue the matter in the Federal courts. Now, many critics of the administration claim that there is a conspiracy, that the administration denies all Salvadoran asylum claims, because it would be embarrassing to our Government.

Well, to the contrary, the figures show that we do in fact, grant a number of those cases, and we can get into that later. But, if you had a conspiracy, it would mean that you would have to have all of these bodies, the independent judiciary, the independent administrative judges, along with the State Department and the Immigration Service, all together coming up with this, and we think that that is ridiculous on its face.

There are many, many frivolous claims for asylum. I think the documents—and again our testimony reflects that—show that that is the primary situation. The people themselves do not significantly claim that they are being discriminated against, harrassed, or persecuted.

The other factor is that 71 percent of these cases are currently still in process. We have denied a great number. We have approved some, some 300 which covers 500 people, but we have over 71 percent, or about 9,000, that are still in this whole process.

Again, I see that the time is up. So, in conclusion, certainly on behalf of the administration, we would oppose this bill, and we would hope the committee would not report it out.

Senator SIMPSON. Commissioner, you said you had a chart and you were not given an opportunity to show it. If you want to take about a minute and show us what this chart is we will include that, if you wish.

Commissioner NELSON. This, I think, is fairly graphic of the process. Over here are the apprehension figures, in the last 3 years, of El Salvadorans. As you can see, the number has gone up from 14,000 to nearly 19,000. This is the number of expelled, and this has actually gone down from 5,500 to a little under 4,000 in the last 3 years.

But here is really a summary of what I have said. This is the big number that is still in the system; 35,000 are still in this system. So, when we hear all these stories about shipping them all out, it is really not true. They are still there. And again, this reflects what I had gone over, the various steps within the Immigration Service, the State Department, and the administrative judges.

Senator SIMPSON. Now, Commissioner, you are saying that on every single petition for asylum that all seven layers there are used by the person seeking asylum.

Commissioner NELSON. They are available.

Senator SIMPSON. Available to that person. In other words, especially if they had an attorney filing their asylum claim.

Commissioner NELSON. Correct.

Senator SIMPSON. Is that what you are saying?

Commissioner NELSON. Yes, sir. We can refer to these later if need be; there are two charts. These are really the forms that we use, a record of deportable alien. The point of this chart, and more importantly the next one, is to show that you have a form which sets forth the information given to any alien on the right to a hearing, the opportunity for voluntary departure, the right of representation by legal counsel, communication with the consul of their own country.

So, I think, again the system clearly lays out to the individuals that they have this full panoply of rights under our existing laws. And we think this maintains that the due process procedures are very thorough and should be kept in place.

Thank you, Mr. Chairman.

[Statement follows:]

PREPARED STATEMENT OF ALAN C. NELSON, COMMISSIONER, IMMIGRATION AND NATURALIZATION SERVICE

Mr. Chairman and Members of the Subcommittee:

I welcome the opportunity to comment on S. 377 which you are considering today. The Administration believes that the bill not only is unnecessary, but also that it fundamentally undermines the comprehensive and orderly system created by the Refugee Act of 1980 as well as this nation's entire immigration system covered by the Immigration and Nationality Act.

The Administration is opposed to this bill because it proposes an inequitable solution to a problem that does not exist. If the purpose of the bill is to protect El Salvadoran nationals from random or war-related violence in their country, it fails: the bill only proposes to offer refuge to those who are here and it ignores nationals of other violence affected countries.

In short, the bill accomplishes nothing that cannot better and more equitably be done under the existing Refugee Act of 1980. In this context, I would like to focus on two issues. The first concerns the reasons why the Refugee Act of 1980 should not be circumvented by this bill. The second concerns the procedures for handling asylum claims from aliens in the United States -- whether they walk in and file an application with a district director or have been apprehended and are filing with an immigration judge.

Reversing the Intent of the Refugee Act

This bill would establish extraordinary and unique procedures for handling nationals of El Salvador in the United States without regard to their reasons for entry into the United States, and in contrast to existing law and policy which are intended to treat aliens of all nationalities in a similar fashion. Congress passed the Refugee Act of 1980 to supplant the piecemeal and nation-specific legislation and parole programs under which refugees had been admitted to the United States. The stated objective of the Refugee Act was "to provide a pertinent and systematic procedure for the admission to this country of refugees of special humanitarian concern to the United States. . . ."

It set up a system under which any person--regardless of origin--can apply for and receive individual consideration of the merits of his or her claim to asylum or refugee status.

S. 377 proposes to circumvent this system, established by the Refugee Act only five years ago, and return to the ad hoc and discriminatory approach of the past. Title III of this bill would prohibit the Attorney General from detaining or deporting virtually all nationals of El Salvador who are present in or, as a practical matter, who enter the United States during the next two years. In essence, it would create a class of virtually every Salvadoran who can manage to enter the United States and, regardless of whether the individual has a legitimate claim of persecution, would provide a period of approximately two years during which members of this class could remain in the United States. This raises the prospect of a stream of Salvadorans illicitly entering the United States under the effective sanction of this legislation. In effect, Congress would be encouraging Salvadorans to enter the United States by the hundreds of thousands in any manner possible to take advantage of the provisions of this bill.

Let me now review the legislative history of the Refugee Act of 1980. The United States became a signatory to the United Nations Protocol Relating to the Status of Refugees in 1968. In ratifying the Protocol, the Senate made it clear that it believed that the Protocol was consistent with existing U.S. immigration laws. But the Protocol was not self-executing. That is, while the United States had undertaken international treaty obligations, those obligations were not enforceable in the U.S. courts without the passage of domestic legislation.

The Refugee Act of 1980 was that implementing domestic statute. In passing this legislation, the 96th Congress intended to provide the sole vehicle for meeting U.S. humanitarian obligations relating to victims of persecution. As stated in the Senate Report to the Senate version of the bill:

> The Refugee Act of 1979 establishes for the first time *a comprehensive United States refugee resettlement and assistance* policy. It reflects one of the oldest themes in America's history -- welcoming homeless refugees to our shores. It gives statutory meaning to our national commitment to human rights and humanitarian concerns.... And it places into law what we do for refugees *now by custom* and *on an ad hoc basis*. S. Rep. No. 96-256 (1979) at 1. (Emphasis added.)

Note the last phrase. A major purpose of Congress in passing this Act was to get away from nation-specific refugee legislation. The concept was to remove from the Executive Branch discretion to use the parole power to bring in large groups of refugees on an *ad hoc* basis, we well as to eliminate Congressional debate over special refugee legislation for various national groups.

Former Secretary of State Cyrus Vance and Congressman Peter Rodino, Chairman of the Committee on the Judiciary, both emphasized that the bill was meant to address *all* refugee situations, emergency and otherwise. Both characterized the legislation as "comprehensive" and pointed out, "... the necessity for enacting coherent legislation to meet future and continuing refugee emergencies."

As to who was covered by the legislation, the Conference Committee was crystal clear that while the legislation would incorporate "the internationally-accepted definition of refugee contained in the U.N. Convention and Protocol Relating to the Status of Refugees ... as well as Presidentially specified persons within their own country who are being persecuted or who fear persecution." However, persons who themselves had engaged in persecution as well as those fleeing military or civil disturbances were excluded from the definition.

In summary, there are several conclusions that may be drawn from the legislative history and the language of the Refugee Act of 1980. First, the U.N. Protocol was implemented by the Refugee Act of 1980. The Refugee Act was designed to be the only implementing instrument. Second, the Refugee Act was intended to be the comprehensive method by which the United States would respond to all refugee-producing situations. Third, the Refugee Act was meant to apply to all persons who might be termed "refugees" under domestic law and regulation and to meet the human rights and humanitarian obligations of the United States to such persons. Fourth, the Conference definition of "refugee" specifically excluded the language of the Senate version which would have encompassed displaced persons.

The Refugee Act of 1980 also contains the sole basis for the United States to meet its obligation of "non-refoulement" of refugees under the U.N. Protocol. In addition to giving a statutory basis for asylum, the Refugee Act amended section 243(h) of the Immigration and Nationality Act, 8 U.S.C. 1253(h), for this express purpose.

Given this fact, it is simply untenable to assert, as some persons have done, that El Salvadoran nationals in the United States may claim a basis under any other international agreement or human rights law to enter and remain in the United States. Such an assertion flies directly in the face of Congressional intent to establish a comprehensive refugee policy, to assist refugees of special concern, and to meet international obligations relating to "non-refoulement" by means of the Refugee Act of 1980.

Asylum Adjudication

Some proponents of this bill have claimed that a purported discriminatory policy against Salvadoran asylum applicants is a key reason why a special temporary stay of deportation provision must be enacted for Salvadorans. Asylum regulations issued in accordance with the Refugee Act of 1980 provide common procedures for handling asylum requests regardless of nationality and with only minimal differences if the alien files with the district director or presents his claim to an immigration judge. In the former case, he or she is interviewed by an immigration examiner and then the asylum application is sent to the Bureau of Human Rights and Humanitarian Affairs (BHRHA) of the Department of State for an advisory opinion. After the advisory opinion is received, the file is reviewed and a determination is made in the case. If the district director denies the application, the alien may renew the claim in proceedings before an immigration judge.

In the case of an alien who is being held for exclusion or deportation proceedings, the process is basically the same. First, the hearing will be recessed to permit the alien time to submit an asylum application. Second, if the alien is being detained his or her bond can be lowered based on facts presented at the redetermination hearing which were unavailable to the INS district director when he set the original bond. Third, the application will be sent off to BHRHA. After the BHRHA advisory opinion is received, the immigration judge conducts a full, due process hearing with fact finding under oath at the end of which he issues a decision on the application. The applicant may have counsel and may present evidence and testimony at such hearing.

The Administration has been accused of having made a deliberate policy decision to deny applications from nationals of friendly Central American governments. The administrative process makes the function of the immigration judges separate from that of the INS and its district directors; the State Department's function is separate from both; the reviewing administrative panel, the Board of Immigration Appeals (BIA), is bound by its own precedents which apply to all nationalities; and the U.S. Courts of Appeal, which review the BIA decisions, unquestionably are not part of the Administration. To give any credence to the deliberate policy theory, you have to believe that there is an organized conspiracy, joined by many employees of these separate organizations specifically to deny asylum to El Salvadorans. In sum, it is not our policy to deny legitimate applicants this important protection.

The assertion that the INS denies all Salvadoran applications for asylum simply isn't true. We grant the ones which demonstrate a well-founded fear of persecution. Last year we granted over 300 at the district director level. Over 500 individuals were covered by such grants. More were approved by immigration judges.

Why are so many denied? As a matter of fact many applications for asylum by El Salvadorans are not merely poorly documented, they are often patently frivolous on their face. What does a district director or an immigration judge do with an application such as this one:

> -- The page requesting information detailing the reasons for the application essentially is blank, but for the response to the question, "If you return to your country, for what specific reasons do you believe you will be persecuted?" The applicant didn't check "race"; nor "religion"; nor "nationality"; nor "political opinion"; nor "membership in a particular social group"; she checked "other." And what was the "other" reason? She believes she will be

persecuted "because of the war." The Refugee Act of 1980 was not designed to provide relief for this kind of situation.

-- In response to the question, "What do you think would happen to you if you return?" She answered: "Nothing. I would go home."

-- The addendum to this I-589 is equally revealing. She left El Salvador, "Because of the war" traveling to the U.S. through Guatemala and Mexico "to see my uncle." She didn't apply for asylum in either of those other countries, "Because I don't like Mexico or Guatemala."

Based on the information provided by this applicant, should she be granted asylum? There are quite literally hundreds of such applications. All these applicants are interviewed by an immigration officer and get full asylum hearings before an immigration judge. All have a right to appeal an adverse decision to the BIA. They may further appeal to the federal courts. No other country in the world provides so elaborate a series of procedural safeguards to ensure that individuals who fear persecution are not returned to nations where they would be harmed.

Our system provides so many procedural safeguards that over 71% of El Salvadoran nationals apprehended in Fiscal Years 1982, 1983, and 1984 are still in the legal process. That's over 35,000 people. The inescapable conclusion to be drawn from the frivolousness of many of the applications is that the asylum process is being abused by people who have no valid claims under U.S. law but who wish for other reasons -- perhaps economic -- to remain here for a period of time.

Adverse Consequences of the Bill

S. 377 and its House counterpart H.R. 822 seek to accomplish two worthy objects: to study the fate of returnees to Central American and to assist El Salvadoran nationals illegally in the United States. But while we can sympathize with the sentiment behind these proposals, the legislation itself would accomplish little that has not already been done and it would vitiate the entire purpose of the Refugee Act. Further, it will seriously hamper enforcement of the Immigration and Nationality Act.

While we would welcome any new study by the Government Accounting Office, or other entity, studies such as those called for by S. 377 previously have been done. Surveys of refugee camps and returnees are going on all the time. The U.N. High Commissioner for Refugees has just completed a tour of Mexican refugee camps. Other non-governmental organizations have conducted surveys of returning Salvadorans. The results of these studies have been the same each time: (1) the people in the refugee camps primarily are displaced persons; and (2) Salvadoran returnees are not persecuted or harmed because they have been expelled from the United States.

The temporary stay of deportation for Salvadorans, called for in Title III of the bill, simply is unnecessary. No one is forcibly returned to El Salvador -- or any other place -- who has not had a full and fair opportunity to exercise his or her full due process rights under the 14th Amendment.

A serious concern is that by granting these temporary stays of deportation, the historic flow of migrants from Central America will be swelled by even more persons seeking economic betterment. Plainly said: If a Salvadoran migrant can find his way to the United States, as tens of thousands of Central Americans do each year, S. 377 will allow him to stay, sink roots, and find other means to "normalize" his immigration status. This will make more difficult our efforts to control illegal entry along our Southern border and establish trends which may lead to an invasion of "feet people" magnifying the migration from that region making what we already see as a stream become a torrent. Although the bill applies only to Salvadorans in the United States at the time of enactment, it will be impossible to preclude later entrants who assert that they were here prior to the effective date.

INS apprehensions of Salvadoran nationals increased more than 100 percent from 1978 to 1984, from 8,968 to 18,920. Proponents of this bill argue that these figures evidence the flight from persecution or violence. However, there was no significant jump in 1979 and 1980 immediately after the 1979 changes in government and the period of greatest civil disorder in El Salvador. Instead the largest number of illegal Salvadorans have been arrested this past year, when by all accounts the government of El

Salvador has been in greater control of the country and the number of human rights violations has decreased significantly.

A second question in this regard: Is this "temporary safe haven" really temporary? Once here, how many of the Salvadorans are likely to go home? Instead of returning to El Salvador once the violence subsides, it is probable that these beneficiaries of temporary stays of deportation will take the route of other migrants before them and maintain their resettlement here in the United States. It would be nearly impossible to locate and remove the estimated 300,000 to 500,000 illegal Salvadoran aliens after the temporary stays expired.

The Refugee Act of 1980 created a system under which all national groups would be treated equally and fairly. To stay deportation for El Salvadorans while compelling other nationalities to return to similar unsettled conditions is fundamentally unfair.

I have approached this subject from the ground up because I believe that it is important for this Subcommittee to understand that the system created by the Refugee Act of 1980 is in place and works. It is folly to return to the old system, which was abandoned by the will and wisdom of Congress a short five years ago for sound reasons which remain true today.

To summarize -- It would be contrary to the intent of Congress in establishing the Refugee Act of 1980 to turn away from the concept of "nationality specific" enforcement of our immigration laws. We have a fair and workable system of asylum. Instead of establishing a special system of temporary stays of deportation for Salvadorans, those elected representatives and the segments of this society that support this legislation should redouble their efforts to make the current system work.

The Administration believes that the current system works if only the applicants will use it. This committee should consider this bill in the immigration context and not support S. 377, which is ill conceived and will certainly have a "magnet" effect, encouraging high levels of continuing illegal entry by people from Central America.

On behalf of the Administration, I urge you not to support S. 377.

Senator SIMPSON. Thank you very much. I appreciate that. Let me ask some questions of Mr. Abrams and Mr. Nelson. To you, Elliott, could you please comment on the allegations by some groups and organizations that name and address matching techniques prove that returned Salvadorans have met their death in El Salvador.

Secretary ABRAMS. We would, of course, disagree with that. Every effort to study the future of people who are sent back to El Salvador has revealed little or no evidence that there is violence. If you look at the ACLU study, they put in the computer—these are rounded figures—basically about 30,000 names and tried to match people on a list of those whose human rights had been violated with those deported from the United States, and they gave it up.

In testimony in one case, Orantes Hernandez versus Smith; that is Attorney General Smith; there was a deposition taken last year in which the ACLU really admitted they just could not do that kind of matching. That is, the question was did you make any further inquiries to verify that in fact the Juan Hernandez—that was the name that was pulled out of the air—listed in the deportee data base is the same as the one listed in the victim file?

Answer: "Well, this is why we have abandoned the study because we do not have the resources to check upon these. We did not want to continue the study."

You will hear, obviously, from the ACLU later, that out of that 30,000 names they came up with, one-third of 1 percent might have been on both lists, might. And that of course includes people who actually turn out in the end not to be on both lists, or to have a common name, but could be two different people or to have had something happen to them which may have been a criminal act rather than a politically motivated act of violence. We have had some of the same difficulties ourselves. In the initial study we did last year we found a lot of fake addresses that had been given to us.

ICM has just completed its study and it also has found a number of fake addresses. But, on the other hand, hundreds of addresses are not fake, and we were able through personnel that work for the U.S. Embassy—and ICM has now been able, through personnel that work for it that have nothing to do with the U.S. Embassy—to follow up on hundreds and hundreds of cases, and we did not find one case of somebody who came back and was the subject of death squad violence or of murder or human rights violations by the Government, nor did ICM. And again, when you then take that data which is not scientific, and you present it to someone like the archbishop or the Tutela Legal and say, well, what do you hear around here? Do you hear that people who are deported are generally subject to human rights violations? They say no.

Senator SIMPSON. Could you briefly outline your view of the current human rights situation in El Salvador with a focus on the level of violence, contrasting it, say, with the situation there 3 to 5 years ago, contrasting it even to a period 18 months ago when this bill was first considered in the U.S. Senate?

Secretary ABRAMS. I have a chart; here I bow to the preparations from the Department of Justice and the Immigration Service. It is too small, but I will just show it up for the members of the subcommittee. You can see the significant and continuing decline in the level of violence. The upper line is the average of various Salvadoran sources including Tutela Legal. The bottom line is press reports. But both show a continuing decline in 6-month averages.

It has really been, I think, acknowledged by just about every human rights group that, both from the point of view of disappearances and the point of view of death squad killings, the numbers are significantly down.

The figures in 1981 were as much as 600, 700, at one point 800, 900 victims per month. It is down now basically to around the forties. The total number, according to the U.S. Embassy, for example, was 35 in December, 53 in November of last year, 57 in October, 40 in September, which is roughly 5 percent of the figure that we had in, say, 1981. And the trend continues to be downward. That is 35 in December 1984; that was the lowest that had been recorded in about 5 years.

And, as I say, we have had a lot of trouble in getting the U.N. Human Rights Commission to acknowledge any kind of democratic progress, human rights progress in El Salvador, but the numbers were so striking that at this session in February and March of 1985 in Geneva the Commission really had to acknowledge it and did so.

Senator SIMPSON. Are there any countries today where there is first asylum from which Salvadorans are now returning to their homeland? If so, which countries or country are those and how many have returned?

Secretary ABRAMS. There is a steady flow of Salvadorans, an increasing one, from Honduras back to El Salvador, a voluntary one, using, for example, ICM as a means of getting back. In 1982, only 2 dozen Salvadorans in Honduras asked to be repatriated voluntarily.

Now, others may have gone back simply by walking across the borders, but we only know of 2 dozen who officially requested repatriation. In 1983, it was 502. In 1984, it was 2,257. So the numbers are really increasing quite rapidly, and that is a trend that continues.

I would also again like to point out that one of the countries from which there is a very large number of Salvadorans voluntarily going back home is the United States of America. We grant 8,000 immigrant visas each year. We grant roughly double that, perhaps even three times that in the number of tourist visas to Salvadorans.

Senator SIMPSON. From this country back to El Salvador?

Secretary ABRAMS. Yes. There is a tremendous flow of tens of thousands of Salvadorans voluntarily, without any U.S. Government interest or pressure returning to El Salvador.

Senator SIMPSON. Would you submit those figures for the record? That would be helpful.

You mentioned that the State Department recommended only about 3 percent of applications from people from El Salvador. I would like to know why that is and what accounts for what would appear to be a fairly low rate.

Secretary ABRAMS. I am tempted—you know, the real answer is a very brief one and probably too brief, and that is, because that is the percentage of applications that really tells the story that convinces you they meet the statutory standard for asylum. We do not have any quotas. Politically it would be much easier for all of us if we were to quietly issue an instruction to the officers handling this; hey, you know, let us get up to 40 percent this month and get the pressure off.

But there are thousands of applications from Salvadorans which really do not say anything, which are essentially blank, which may have only one or two lines filled out, and thousands of them say I came here because the economic situation is bad or I want to find work.

Now, it may be that there are many more applicants who are, for example, persuaded by well-meaning citizens of the United States, some of them, for example, in the sanctuary movement, not to apply; not to apply because they will not get asylum, they are told, or who are told that the Government will not treat them fairly.

Maybe there are other applications out here which we do not see and which would raise the percentage of approvals. But I would just like to add one more thing, that that percentage is quite low. The percentage of approval for virtually every other nearby country, Guatemalans, Haitians, Nicaraguans, is also quite low. And it is low, I think, for a simple reason, and that is it is logical that when a country has a long history of supplying large flows of economic migrants to the United States, it is really fairly logical that the number of people in that flow, who are in fact moving for reasons of fleeing persecution, is going to be lower than in the case of a country halfway around the world where there is no practice or tradition of going to the United States temporarily to find work. That is something that is done in the Caribbean and Central America, people trying to improve their standard of living; it has been going on for decades and it continues.

Senator **Simpson**. You described the applications. Just briefly, what sort of things or conditions do you really look for in reviewing those asylum applications? What are the standards that you apply?

Secretary **Abrams**. Well, basically you are trying to make a judgment. There is no way of turning it again into a matter of science. You are making a judgment as to whether the alleged fear of persecution is well-founded. Now, again many applications do not assert fear of persecution. They can be dismissed on first reading because they just say "I am here for economic reasons."

For those who say "I am here for political reasons," who at least make the claim, then you look for some kind of evidence, something that goes beyond saying it is a bad situation down there, which is not sufficient; something about the individual case. What did you do in El Salvador that gives rise to this fear? What organization were you a member of? It asks that question. Were you ever in trouble with the authorities? We ask ourselves, were you ever in jail? Were you ever shot at? Were members of your family persecuted?

It really is, I think, mostly a matter of logic, that we try to look for evidence that would indicate why this individual is different from every other Salvadoran.

Senator **Simpson**. Thank you. I do not want to take all the time of inquiry here. I know Senator DeConcini may have some questions. If you do, Dennis, please feel free to go right ahead.

Senator DeConcini. Mr. Chairman, thank you. I do have a number of questions. I will submit some of them because of the time restraints.

Mr. Abrams, you know, it greatly concerns me, the generalization that is derived from all the studies, and like you say and rightfully so, these studies have been held by many people and probably nothing is absolute from them. We hear a lot about the studies conducted by the State Department; namely, that 500 deportees were followed and there was evidence that only one person had been killed as a result of that violence that took place in El Salvador. In view of the violence which is occurring there and Amnesty International, I think is probably not too inaccurate saying that 40,000 people have died in violence there in the last 4 years, do you feel justified in your department's assumption that 250 deportees which were not located were not killed as a result of violence or were not subject to great intimidation and fear?

Secretary Abrams. I do, Senator, first, because it seems to me that we or others who have looked into this, such as people working for ICM, studying the cases of people who they had initially received at the San Salvador Airport—that is since last December—would have come across more cases. Even if you assume that there is a varying percentage of subjection to persecution between those who we find because they give genuine addresses and those we do not find because they give fake addresses, even if you assume that there is a difference, it cannot be a difference between 0 and 100 percent.

There must have been some people who gave real addresses to the INS or to ICM who we would be able to locate and whose parents or whose spouses or whose children or whose neighbors would have been able to tell somebody that something bad had befallen them.

But going beyond that, it just is inconceivable to me that if this were a pattern in El Salvador, that, for example the archbishop and the human rights office of the church, the Tutela Legal, would not know about it.

It is interesting to me that this claim that there is large scale persecution of returnees just is not heard in El Salvador.

Senator DeConcini. Do you think, that there is large scale fear and persecution or violence occurring to people, who are still within El Salvador, who have moved into refugee camps and that is why they do not go back to the area where they came from? Do you think that is a safe assumption?

Secretary Abrams. I think for the most part it is fear of violence, which is difference from fear of persecution.

Senator DeConcini. Well, do you think violence is—when you say it is different from persecution, if you are going to have violence dealt to you because you return to your village, what difference is that than if someone is waiting for you to come back to beat you up rather than if you just come back and they did not know you were coming back and they beat you up?

Secretary Abrams. The difference is this: If you are, for example, a political activist and there is a death squad out looking for you, then it hardly matters where you are in El Salvador. The chances that if they really want to find you they will find you and they will kill you. And if we send you back to El Salvador, there is very good grounds to think you will be persecuted. If you are the typical citizen of El Salvador, of course, you are subjected to a bad economic situation and you are probably afraid that at some point the war may move into the area in which you live and that that is why you may be subjected to violence.

Senator DECONCINI. Let me interrupt you just a minute. If the war has already moved in one or two or three or more times and you have been displaced, is that not very similar to persecution if you go back there knowing that the guerrillas may be in next week or the National Guard may follow?

Secretary ABRAMS. Well, then the question is, Senator, and this is what I was going to say next; why do you go back there? One of the reasons that there are people in displaced persons camps in El Salvador is that some parts of the country are safe and some are unsafe. We do not deport people to an unsafe village. They get off the airplane in San Salvador and ICM meets them and asks them, do you want to go back to your village. If so, we will give you busfare.

Do you not want to go back? Do you want to be introduced to the church authority or the national authorities to get help from them as to where you should stay in El Salvador?

But it seems to me that if one says it is not persecution that we are talking about now; it is that there is violence in El Salvador, now the question becomes, well, should we be assisting Salvadorans to live in the safe parts of their country or should we simply invite every Salvadoran to move to the United States. And I would say the former rather than the latter.

Senator DECONCINI. Let me ask you, have you visited some of the displaced persons camps and refugee camps in San Salvador?

Secretary ABRAMS. I have not. Members of my staff have.

Senator DECONCINI. I have. And one was at San Jose de la Montagna Seminary, which is operated by Archbishop Rivera, and the Federal Government is not permitted to go in there without his written authority because of fear and having talked to 10 different families and members there, 6 of them told me that they would not go back to their villages because they felt that the National Guard would come and get them because they had given chickens and some aid to the guerrillas.

Three told me just the other way. They were afraid of the guerrillas because they had lost loved ones coming through. And the conditions of this camp and the one operated by the central government of El Salvador were deplorable. I mean, the sanitary conditions were terrible, and it is no place that you would want to send anybody; sending them back there and they get off the plane and say, do you want to go to your village, and the answer is no, so you send them to one of these camps.

My point is that do we not have some responsibility as we did in Afghanistan, Ethiopia, and Nicaragua in June 1979, and Afghanistan today, when we are involved on one side of the issue, as we are in Afghanistan, and though it is classified as to the amount and specifics of that involvement, it is very clear from the President's reference to the freedom fighters there that we are involved; should we not have some responsibility as to sending these people back to a condition of squalor, of unhealthy conditions when they are our allies?

These are people that are friends of the United States. These are not people that are hostile to us. And that is what troubles me as a member of a Senate, that has supported President Reagan's economic and military aid to El Salvador and applauded him and Vice President Bush for taking the very hard line on human rights there, and it has improved. I agree with you.

How do you answer the question of where is our responsibility to our allies and friends, who if we send them back, if we send them to the village we can agree that some of them are in danger, so we do not send them there. That is why we are asking. If we put them in displaced persons camps, it is a deplorable condition. Is that as far as our obligation is to go is to put them into unsanitary, unhealthy, low nutrition camps?

Secretary **Abrams**. No, I am in complete agreement with you, but it seems to me that that greater responsibility, which I agree with you we have, is one which we are largely living up to, first, by using every possible political pressure we can to help build a better form of government in El Salvador. And there there has been remarkable progress.

Senator **DeConcini**. I agree with that.

Secretary **Abrams**. Second, to try to get the levels of violence down, and they are down. Third, to give the kind of economic assistance that we're giving; and I—you know—I do not speak for OMB. I mean, I think that if we need increased levels of assistance to bring up the levels of the standard of living in those camps, then it seems to me that is what we should be doing.

But I want to make clear on the analogy of Afghanistan, when Afghans come here from Pakistan where they are safely in camps we do not accept them. We send them back, assuming they are undocumented, that they are illegal immigrants.

Senator **DeConcini**. Well, we have voluntary departure status now for Afghans, is that right, since 1980?

Secretary **Abrams**. That is correct.

Senator **DeConcini**. And the reason given for that is that "because of turmoil prevailing in that country." Is that correct?

Secretary **Abrams**. Well, not exactly, I would say, because if you look at the countries which today—and I speak for the Reagan administration, not for the previous administration, which had EVD for Nicaragua. If you look at the four countries for which there is EVD today, one thing in common about them is they are far away, and that is not a coincidence.

That is, we are extremely reluctant to grant EVD to any country which is nearby and has had a long history of massive illegal immigration to the United States for economic reasons.

Senator **DeConcini**. Well, we granted EVD to the Chileans in 1971 and 1977, realizing that you were not there and this administration. The reason there was because of circumstances prevailing in Chile. Gosh, circumstances prevailing in El Salvador into certainly the general category of circumstances.

We know the circumstances of violence. We know it has improved. We know the circumstances for humanitarian availability for these people in displaced camps.

Mr. Chairman, I will submit the balance of my questions to Mr. Abrams. I do have just a couple of questions of Mr. Nelson, if the chairman would not mind.

Senator Simpson. If you have a schedule problem, why do you not go ahead and ask those now, if you wish.

Senator DeConcini. Fine, thank you.

Mr. Nelson, No. 1, I appreciate the sincerity in which you present your case here, and you have indeed been extremely responsive to our request for information, not only in this area but other border areas of my State.

Can you tell me how many asylums have been filed for El Salvador, how many have been granted, and what is the average time of the process. If you want to supply that to the record for time's sake, I would be more than happy to take it in that manner.

Commissioner Nelson. I would if possible like to do that, Senator DeConcini, but I can answer generally. I think this chart that we have really handles it in general terms. In 1984, we had something like 13,000 applications. We did deny most of those.

Senator DeConcini. When you say "most," can you be specific, if not now, later.

Commissioner Nelson. Yes. We will give you the specific figures. Rather than wallow through the paper here, I will try to do it off the top.

Senator DeConcini. Fine.

Commissioner Nelson. We granted over 300, and that included about 500 people with families involved. And, as I understand it—Mr. Abrams can correct me—that is about the highest number, second highest number of asylum grants.

It does somewhat go against the theory that, well, we will not grant asylum to anybody from El Salvador. In fact, we have. The numbers are low, and as Mr. Abrams indicated, we think there are good reasons for that. The rest, some 13,000 or so, the balance, we denied, but, as indicated, most of those, about 9,000-some-odd, are still in the pipeline. So, some 3,800 have gone back to El Salvador in the last year.

Senator DeConcini. Is it available for us at a later time or for you to submit to us the average time of processing?

Commissioner Nelson. Yes. We will submit that to you, and what I can indicate again generally is that very often when people avail themselves of all these steps indicated in the chart, it can go on for a number of years.

Senator DeConcini. Would you agree that if 18,920 was the number submitted in 1984 and some 300 were granted, that it certainly is no incentive to apply with those kind of figures?

Commissioner Nelson. First of all, those are the number of apprehensions. The number that applied is something in the 13,000 level. So I think you realize that a number of those themselves do not apply for asylum.

Senator DeConcini. Excuse me. I am looking at the orange column there. Those are apprehensions. I am sorry.

Commissioner Nelson. Right.

Senator DeConcini. How many applied, 35,000?

Commissioner Nelson. 13,000. The 35,000 is the cumulative number of people that are in the pipeline, but for the 1 year of

1984 it was close to 19,000 apprehended, approximately 13,000 applied for asylum, and of those, 300 or 500, it depends on how you break the cases out, were approved. The others were denied, but most of those 9,000 from that year are in the pipeline still.

Now, that pipeline can be a lengthy one because of the many steps, and we all certainly agree with the due process needs. On the other hand, we recognize that a lot of people, not just Salvadorans, but a lot of people have found that using the asylum process can be a dilatory tactic, and that is a concern to all of us, also.

Senator DECONCINI. Would you agree with the general statement that out of 13,000 who have applied and only 300 granted in 1984, it is certainly not much of an incentive that they are going to be granted?

Commissioner NELSON. Well, I would agree that the numbers are low, but, as Mr. Abrams pointed out, I think again if you look at the facts on the types of application, the background of the people that for 50 years have come to the United States—and there are probably close to half a million Salvadorans here—long before there was any violence. Also, it is interesting, some figures I saw reflect that during the heavy violence in 1979-80 actually there was no significant increase in Salvadoran apprehensions.

So, I think the pattern shows that these people are, in fact, as in the past, coming here for economic reasons, and then that is being proved through the legal process. So as far as the incentive, this may be a case where those that are pushing for asylum do not like the answer, but we think the system is there. It is fair. It is honest.

Senator DECONCINI. Mr. Nelson, let me ask you one last question and then I will submit the balance of them. You said the number of roughly 500,000, we believe are undocumented Salvadorans or Salvadorans in general that are here?

Commissioner NELSON. Undocumented Salvadorans.

Senator DECONCINI. Undocumented Salvadorans. What would you guess of how many of those that we might know where they are located?

Commissioner NELSON. Well, that is hard to say, Senator. It is very difficult to know. Some of those, of course, we know, but probably the great number we do not.

Senator DECONCINI. If voluntary status was granted to them, would that require them to come forward and be identified? Or would it just stop you from taking actions to apprehend them and deport them?

Commissioner NELSON. It would probably be a combination of those, Senator. Certainly, anything should be documented, but my guess would be that very few would come forward.

Senator DECONCINI. Would it be advantageous if the legislation said that in order for them to have voluntary status that they come forward and be identified?

Commissioner NELSON. It would seem to me, Senator, if you had that kind of language in there, in most cases they are probably not going to abide by it, either because they do not know about it or do not trust the system or why rock the boat; they are getting along quite fine now in their current status.

So, I question whether putting anything like that in the bill would really make a lot of difference, to be honest with you.

Senator DeConcini. You do not think it would make any difference as to how many would come forward?

Commissioner Nelson. I would question it.

Senator DeConcini. From your standpoint as the Commissioner of INS, would it be better if you knew of this large number, who they were and where they were in this country, if they were here legally?

Commissioner Nelson. It would always be better to know who is here legally. Of course, the whole thrust of the immigration reform legislation that Senator Simpson, with your support and others, has been pushing through, is to give as a clear ability to continue to encourage legal immigration and do all we can to deter illegal immigration. One of the concerns we have about S. 377 is that it opens up a lot of opportunity for more people to come, for more people to stay, and the difficulty of having them go out.

Senator DeConcini. How do you conclude that it would bring more people when it would be based on the effective date? That would be after that, would it not?

Commissioner Nelson. Well, certainly when you have an opportunity, and I think as Mr. Abrams indicates, for a country that is in fairly close proximity to the United States, and a lot of them have found it easy to get here anyway, and when they know that when they get to the United States, that they can merely stay here and there is no ability to get them out, it would definitely encourage the flow. And then the question is, well, if we have a cutoff date, but in that regard, that is when you get into the very difficult enforcement things, because you will have fraudulent documents. You will have a difficult situation to prove that.

Senator DeConcini. You do not have any evidence that having an effective date is in fact an attraction from other countries, do you?

Commissioner Nelson. Well, I think, the thing, Senator, is that if you do have an open extended voluntary departure situation, it seems a matter of logic that that is going to encourage people not only here, of course, to stay and not be deported or go back voluntarily, but it definitely will encourage others to come.

Senator DeConcini. Well, on the cutoff date in the Simpson-Mazzoli legislation that the administration did support, would this be any harder to enforce if this legislation was passed with this cutoff date than the one that you supported in that case?

Commissioner Nelson. Clearly, there is a concern about cutoff dates, no question about it, no matter what situation. That is one of the questions that has been raised in the Congress and the administration concerning what the dates should be regarding legalization.

But on the extended voluntary departure—and I think with the dates that you have, that this was a definite problem.

Senator DeConcini. Thank you, Mr. Chairman. One last question, Mr. Abrams, if the chairman would indulge me. Mr. Abrams, if this legislation was passed in the form presented here, in fact would that be of some embarrassment to the present Government of El Salvador, in your judgment, as Assistant Secretary of State?

Secretary Abrams. I really do not, know, Senator. I really do not know.

Senator **DeConcini**. That is fair enough.

Secretary **Abrams**. If it is taken as a statement that there really has not been human rights progress, then that would embarrass them. If it is taken as sort of an essentially humanitarian or economic move, then it would not. So I think, we really do not know.

Senator **DeConcini**. Thank you, Mr. Chairman. I have a host of questions here, but I will not indulge any more on the chairman's generosity and these gentlemen here. I will submit them for the record.

[Material submitted for the record:]

Questions for Assistant Secretary Abrams from Senator Dennis DeConcini on Suspension of Deportation for Salvadorans

Mr. Abrams, since the hearing on Monday, I have received two letters bearing on your testimony before the subcommittee. I have attached copies of these two letters and would appreciate your commenting on them. The first is a letter from William J. Wood, S.J., Executive Director of the California Catholic Conference to Cardinal Timothy Manning, Auxiliary Bishop of Los Angeles. The second letter accompanies the first and is a letter from Archbishop Arturo Rivera Damas of San Salvador to Cardinal Manning.

In your testimony at the hearing you said that you had had contact with the Archbishop and Tutela Legal, and they had informed the Department that they did not believe that a pattern of prosecution of deportees existed. In Archbishop Damas' letter he quotes a homily from Auxiliary Bishop Chavez, in which he says that with respect to some of those who have been deported back to El Salvador, "The safety and well-being of these brothers of ours is of concern to us, the church community. And all the more so when we reflect on the sad fact that Salvadorans have returned to this country only to meet their deaths a few days later." Reverend Wood explains that "Monsenor Rivera, with utmost delicacy and diplomacy, expresses his judgment and concern—and that of Auxiliary Bishop Rosa y Chavez—that Salvadoran refugees who are sent back to their country are, indeed, in danger even of losing their lives."

Could you please comment on the remarks of these clerics who are in contact daily with those returnees to El Salvador. I do understand that your testimony was concerned with a "pattern of persecution" and the remarks of the priests do not state that such a "pattern" exists. However, I am interested in more than just the semantics of the two apparently contradictory statements.

Question. Mr. Abrams, can you tell me what happens to those Salvadorans deported from the United States?

Answer. Most Salvadorans return to their homes, whether they are from conflictive or non-conflictive zones. We do not deport people to areas of conflict but to San Salvador and from there they travel by their own means to their homes. Recently the Intergovernmental Committee for Migration (ICM) has begun a program of humanitarian assistance to returnees, including bus fare and pocket money to those needing financial assistance to reach home. Also, a small number of returnees have asked ICM to help them to resettle to a displaced facility through the Salvadoran assistance network, CONADES, or to seek resettlement to a third country. We have no evidence that returnees face any greater danger than Salvadorans who never left the country. Of the 794 returnees between December 1st and February 28th, we believe 48 to have returned to the United States, and 4 to be in Mexico.

Question. We hear a lot about the study conducted by the State Department, namely that 500 deportees were followed and there was evidence of only one person being killed as a result of the violence taking place in El Salvador. In view of the violence which is occurring there, do you feel justified in your department's assumption that the 250 deportees which were not located were not killed as a result of the violence taking place?

Answer. In the Embassy's survey of 482 deported Salvadorans, 188 names were untraceable due to incomplete, or entirely false information given to the INS. Another 73 people were not interviewed because it was too dangerous to travel to their homes. Although a number of persons were not traced, we have no reason to believe that our conclusion would be any different if we had traced all those deported. Those who were traced were interviewed throughout El Salvador, in both conflictive and non-conflictive zones. Certainly we would have uncovered some allegation of violence against deportees from those who were interviewed from areas of conflict if in fact this did exist. We did find, however, one person who was killed. His widow reported that he had been killed by the guerrillas.

Question. Is your policy of detaining asylum seekers proving a deterent to Salvadorans who under better circumstances would apply for asylum?

Answer. Detention policy regarding illegal aliens is within INS jurisdiction and the State Department has no policy in this regard.

Question. How many asylum claims filed with Immigration Judges have DOS advisory opinions waiting on them?

Answer. Our estimate is that for the Latin American area there are about 10-15 asylum cases from Immigration Judges, awaiting advisory opinions. We do not keep a breakdown of Immigration Judge/INS District Office cases, but handle most cases on a 30-day turnaround.

Question. What percentage of Salvadoran asylum applications receive an affirmative advisory opinion from the Bureau of Human Rights?

Answer. The Department of State does not compile statistics because the State Department recommendation is an advisory opinion. The responsibility for final determinations rests with the INS, which keeps statistical information. FY '84 INS figures show 328 Salvadoran cases approved and 13,045 denied.

Question. When the governments of Haile Selassie and Somoza fell, there was a great deal of disorder and those persons were granted EVD partially because it would not have been possible for them to prove a specific fear of persecution. How is this different from the situation here?

Answer. The Attorney General's judgment that EVD is not appropriate for Salvadorans cannot be readily compared with his judgments in the past cases of Ethiopians or Nicaraguans. Every EVD decision is based on a weighing, in individual circumstances, of those factors that the Attorney General and the Secretary of State may deem pertinent to the particular case under consideration.

EVD is not granted to aliens who flee their homeland solely because of violence or disorder although these may be factors which the Attorney General takes into account. For example, after the declaration of martial law in Poland, it was also a part of a broader effort, with our allies, to convey to the Polish authorities the seriousness with which we viewed their denial of rights to the Polish people and our insistence that these rights be restored. In El Salvador, civil strife is not prevalent, in all areas of the country. El Salvador is also much closer to the U.S. than is Ethiopia, and illegal immigration is a significant factor. EVD for Nicaragua was terminated September 28, 1980, after having been in effect for a little more than one year. An estimated 60,000 Nicaraguans entered the U.S. after EVD was granted. EVD could constitute a magnet inducing members of the beneficiary nationality to enter the U.S. illegally. On September 25, 1984, Judge Richey (U.S. District Court, D.C.) dismissed a challenge to the Attorney General's refusal to grant EVD to Salvadorans. The Attorney General's refusal to grant EVD to Salvadorans was based among other factors on, foreign policy considerations, the number of illegal aliens in the U.S., the crisis of controlling illegal immigration, and the availability of alternative relief such as asylum.

Question. You and Commissioner Nelson have argued that the adoption of the Refugee Act of 1980 means that we no longer should make ad hoc country by country refugee decisions. Instead we should rely on the Refugee Act and make individualized asylum adjudications? Now we have created an all-or-nothing situation—either a person is granted asylum which could result in citizenship or he or she is deported. These are the only two options under the law unless EVD is administratively granted. Do you believe that we should create new statutory concept of temporary safe haven?

Answer. The Refugee Act of 1980 adopted the concepts and principles of the 1951 U.N. Convention and the 1967 Protocol on Refugees. We became a party to the Protocol in 1968, and thus also accepted the provisions of the 1951 Convention. Under the Refugee Act, the applicant must establish a credible claim that he or she will be singled out for persecution for one of the five specified reasons. Asylum and EVD are not the only options for an alien to enter and remain in this country. He may seek to enter legally as an immigrant, or under the refugee program if he qualifies. We admitted 430,000 persons under regular immigration procedures, plus 70,000 refugees worldwide in FY '84 alone. An alien may also seek suspension of deportation where it is shown, *inter alia*, that deportation would cause extreme hardship to the alien or to his immediate citizen or lawful resident relatives. The alien may also seek other forms of discretionary relief such as adjustment of status.

A new statutory concept of "temporary safe haven" would not appear to be desirable or necessary. A broad based statutory exemption from deportation such as "temporary safe haven" would appear to have the same disadvantages as a broad grant of EVD, and would not be in the U.S. interests. If more narrowly defined it would appear to be merely a restatement of the existing law on the withholding of deportations in section 243(h) of the Immigration and Nationality Act. We believe that existing law and regulations provide an adequate and ample basis to resolve matters relating to refugees, asylum seekers, and aliens wishing to enter the country.

Question. In his homily of February 24, 1985, Auxiliary Bishop Rosa Chavez stated that "The safety and well-being of these brothers of ours is of concern to us, the church community. And all the more so when we reflect on the sad fact that Salvadorans have returned to this country only to meet their death a few days later."

Answer. At the time of the February 24th homily, Archbishop Rivera Damas was presiding over a meeting of the Secretariat of the Central American Catholic Conference in Honduras. The Archbishop was asked about repatriation of nineteen thousand Salvadoran refugees in Honduras. He stated that he was concerned about repatriation because of the continued conflict in El Salvador and also pointed out that the position of the Honduran Catholic Church was that it would only support the voluntary repatriation of the refugees. In his homily, Auxiliary Bishop Rosa Chavez first made reference to the Honduras conference, and then expressed his feelings about those who have returned ". . . only to meet their death a few days later." At the time, he was not referring to deportees from the United States, as inferred in the California Catholic Conference translation of Archbishop Rivera Damas' letter of March 26th. Archbishop Rivera Damas uses the word "repatriados" or repatriated in this letter, rather than "deportados" which would mean deported. "Repatriados" is consistent with the context of the original quote.

Deputy Assistant Secretary Laura Dietrich asked Archbishop Rivera Damas about the homily when she met with him on February 27th. The Archbishop said that in spite of the Auxiliary Bishop's comments, he knew of no concrete cases where refugees have been harmed but that he is concerned about all Salvadorans who must face a situation of continued conflict. Ms. Dietrich also met with Maria Julia Hernandez of Tutela Legal who said she knew of no specific cases of persecution of Salvadorans returning from Honduras or the U.S. Both Tutela Legal and the Archbishop have said that although they do not believe deported Salvadorans are singled out, they face the same dangers as all citizens of El Salvador.

We have addressed ourselves to the question of targeting and a pattern of persecution against deportees, because for the past two years those who advocate EVD for Salvadorans have used this allegation as a basis for their argument. They now criticize the Department for addressing this issue and say that this is a "red herring", perhaps because this allegation has now been proven false.

As conditions continue to improve in El Salvador; as the press reports that civilian deaths have dropped from 9,000 in 1980 to 771 in 1984; as democracy takes hold; as peace talks take place; *now* some would have us believe that there may not be a pattern of persecution, but because everyone is potentially in danger an estimated 500,000 Salvadorans should be allowed to remain in the United States. This stands logic on its head. It has been remarkable to watch the calls for EVD increase while conditions in El Salvador improve steadily.

QUESTIONS FOR COMMISSIONER NELSON AND SECRETARY ABRAMS FROM SENATOR ARLEN SPECTER

Question. In my letter of February 1, 1985, I expressed particular concern about the arrest of the Morelos family, including their three-year-old child.

I asked both State and INS to review Mr. Morelos' claim for asylum to determine whether his claim is valid. As I noted in my letter, I personally saw the scars Mr. Morelos said were the result of torture.

I can understand the need for confidentiality with regard to a pending application. Without going into detail, have you reviewed Mr. Morelos' claim, and is it your opinion that it is valid?

If not, can you tell us why not?

Answer. We have not received an asylum application from Mr. and Mrs. Morelos of Guatemala and therefore cannot comment on the case. As indicated in our reply of March 1, 1985, to your letter of February 1, 1985, we will be prepared to review the case when the record and file are sent to us for an advisory opinion. You may be assured that at such time we will take fully into account your views on the validity of the asylum request.

Question. Also for both witnesses. Also in my letter, I asked INS and State to work together to develop procedures to ensure the confidentiality of asylum applications and proceedings so that home country governments do not learn who has applied for asylum in the U.S. and has, in most cases, made allegations of abuse by that government, in order to avoid reprisals and the fear of filing such applications.

What is the status of these efforts?

Answer. The Department of State maintains a strict policy of preserving the confidentiality of asylum applications. Under this policy, information about an asylum request is to be divulged only to official U.S. citizen personnel on a need to know basis. If it becomes necessary to acquire or check information through our embassy, we do so via classified cable and with instructions not to divulge to foreign nationals that an asylum application has been filed in the U.S. Under our policy of confidentiality we also refuse to provide information to third parties, including foreign governments, about the existence or contents of individual asylum claims filed in the U.S. We understand that INS has had a similar policy for several years.

Question. For both witneses. Another reason refugees from Guatemala and El Salvador are reluctant to apply for asylum is that so few applications are approved.

As I noted in my letter, I am told only 0.4 percent of Guatemalan applications and 2.5 percent of Salvadoran applications were granted in 1984.

Given the civil war in El Salvador, and the general political unrest in that country and in Guatemala, as well as the recent disappearance of two Pennsylvania journalists and murders of members of the Grupo de Apoyo Mutuo, a politically active group pressing the Guatemalan government for information on the disappearances of their loved ones, which seems indicative of the general political turmoil documented by respected outside groups—given this evidence of social unrest and activism, how can you explain these remarkably low approval rates?

If the problem is lack of corroborating evidence—understandably difficult for a refugee who has fled in a hurry and cannot bring in neighbors, etc. as supporting witnesses of persecution threats—have INS and State considered alternative ways of verifying these claims so as to avoid deportation of those who have legitimate asylum claims but lack a signed death threat?

Answer. We do not believe nationals of Guatemala and El Salvador are reluctant to apply for asylum. In FY 1984 the Department of State sent advisory opinions on over 14,800 Salvadoran asylum requests. General conditions of social unrest and activism, in El Salvador and Guatemala and the approval rates for asylum claims in the United States are not necessarily related. Asylum is granted to an applicant if he establishes that he will be singled out for persecution for one or more of the five reasons stated in the law. Unrest and activism are not necessarily a basis for the grant of asylum unless it can be shown that the applicant's acts or views have made him a particular target for persecution. Low approval rates may be the result of poorly prepared applications or applications which do not indicate that a grant of asylum is merited. Applicants are not expected to present themselves with a complete dossier of documents of evidence, although any corroborative evidence related specifically to the applicant is helpful. On the other hand, a newspaper clipping about general conditions in one's country of nationality is insufficient evidence to bolster a claim. Many applications are approved solely on the credibility and merits of the I-589.

Question. For Secretary Abrams. I am concerned about the asylum application review procedures which call for the State Department to review each and every application and render an "advisory opinion."

While Foreign policy may appropriately play a role in our overall immigration policy, it should not be a part of our asylum policy, which is based on nonpolitical humanitarian obligations.

What efforts are made, or procedures established, to avoid a desk officer being influenced by foreign policy concerns when making a recommendation on an asylum application?

Do you know of any cases in which the State Department has recommended denial of an application and INS went ahead and approved that application?

If so, approximately what percentage of State advisory opinions are "overruled" by INS?

Answer. Foreign policy is not a factor in determining whether an individual does or does not have a well founded fear of persecution. In the State Department, asylum applications are first examined by experienced and well-qualified professionals in the Bureau of Human Rights and Humanitarian Affairs (HA). In providing advisory opinions, HA consults with the relevant desk officer and on difficult cases with the Legal Adviser's office. In a number of cases, U.S. personnel in the relevant embassy are asked to check certain facts pertaining to a case. Asylum officers and desk officers are not given politically colored marching orders, nor do they respond to lobbying from immigration lawyers, advocacy groups or special interests. To approve asylum for persons who are not refugees in order to respond to domestic political pressure would be inconsistent with the laws governing the granting of asylum. Our only criteria is one established by our treaties, statutes, and regulations.

The State Department does not keep records or statistics on whether or not its advisory opinions are followed by the INS. Our opinions are not binding on INS or the Immigration Courts and there is no doubt have been cases where our opinions were not followed.

QUESTION FOR ELLIOTT ABRAMS AND ALAN NELSON SUBMITTED BY SENATOR JEREMIAH DENTON

Question. What is the precise criteria currently used by the Department of State and the Immigration and Naturalization Service to decide whether to grant extended voluntary departure?

Answer. Extended voluntary departure refers to the infrequent determinations by the Attorney General to defer or suspend temporarily the normal enforcement of the deportation provisions of the Immigration and Nationality Act (the Act) for specific groups or classes of aliens.

Extended voluntary departure determinations are not made pursuant to any express provision of law, but rest upon the Executive's constitutional authority in the areas of foreign and prosecutorial policy (supplemented by the general delegation of power over immigration in 8 U.S.C. sec. 1103(a)). Extended voluntary departure is a discretionary determination of the Executive Branch that extraordinary circumstances of foreign and/or domestic policy warrant a temporary "suspension" of active application and enforcement of the deportation provisions and procedures specified by the Act and implementing regulations. In deciding whether or not to grant extended voluntary departure status to a group, the Executive Branch has considered any number of factors, including foreign policy, immigration policy, and humanitarian issues, such as whether a grant of EVD would constitute a magnet, inducing members of the beneficiary nationality to enter the U.S. illegally without fear of timely deportation, whether deportation to a country is consistent with the practice of other western nations, or the impact on other foreign policy interests.

In light of the varying and extraordinary considerations which may be pertinent to the use of this authority, the Executive Branch has considered it inappropriate to define this discretionary authority in terms of fixed criteria, such as widespread violence and risk of random injury or death in the country or origin of the class. Every EVD decision is based on a weighing of a variety of concerns, including foreign policy, immigration policy, and humanitarian policy, and each is quite different from the other.

Senator SIMPSON. I appreciate that very much. I know of your concern about those camps, you have been there, and I just want you to know that that was a concern of mine, too. You and I shared that concern, and U.S. aid to those displaced persons camps has since gone from between $5 to $10 million in 1983 and 1984 to between $20 million and $25 million in 1984 and 1985. I think we have a very important commitment there and I am going to urge it and I know you will join me or you can lead and I will follow. If those conditions continue to exist in those camps, and we are aware of that and they are deplorable, then let us increase aid to those camps of displaced persons rather than try to amend the refugee laws of the United States where it may not be most appropriate. That would be my thought.

Senator DECONCINI. I get your message.

Senator SIMPSON. I do appreciate it.

I have some questions of Alan Nelson. Could you please elaborate on the ability of INS to monitor those people who might be granted suspension of deportation status and then your subsequent ability to enforce their departure once the suspension of deportation has been lifted.

Commissioner **Nelson**. Yes, Mr. Chairman. If I might just start with an analogy. A former president of the University of California when asked about a lot of the World War II temporary buildings and why they were still there, made the comment that there's nothing more permanent than a temporary building.

And I think that that might well be an appropriate analogy with refugees or those who are granted EVD status because we have found—and that is true with a lot of illegal immigrants—once they are here for a lengthy period of time, they like it and they want to stay.

And our experience with the Nicaraguan EVD of a number of years ago, I think, bears this out, because when that EVD was terminated and they were, therefore, asked to leave voluntarily or to report for deportation, in the great majority of cases they just did not show up.

I think we can expect that in the Salvadoran case, again with the background as we have talked, with the huge numbers of Salvadorans illegally here, in any event. clearly, as in response to earlier questions here, it is difficult to know where a lot of these people are. So, to answer your question, we definitely feel it would be difficult to have them come forward, No. 1, and, No. 2, to enforce their departure.

Senator **Simpson**. As a practical matter, how feasible would it be for the INS to enforce the cutoff date requirement in the proposed legislation, and what effect would it have on both border and interior enforcement of our immigration laws?

Commissioner **Nelson**. I was trying to answer Senator DeConcini in that area. You know, cutoff dates are difficult in any situation, and specifically when they are more current. In regard to the legalization issue, we did a great deal of preparation to be able to avoid the fraudulent documentation issue because that is clearly a problem. People see a way to come in or to stay in and we think in an EVD situation, particularly with a relatively current date, that this could be a very significant problem.

Senator **Simpson**. An interesting thing I have thought of in my work in this immigration and illegal immigration issue is that when apprehended, often a Salvadoran will claim to be Mexican so that they will be deported back to Mexico. If this legislation were to pass, it seemed likely to me that Mexicans might claim to be Salvadorans so their deportation might be suspended. That was an ironic twist when I thought of it.

Given the extent to which our illegal immigration problems are apparent to any thoughtful person, would it or could it be possible that Mexicans might claim to be Salvadorans under this type of legislation, and what type of problem might that be for the INS?

Commissioner **Nelson**. That is really a very good question, Mr. Chairman, and hard to project that. But it is possible, and that certainly could complicate the situation a great deal. As you know, we have a great shortage in detention space, difficulty of handling the people. If a number of Mexicans got into the situation of trying to pass as Salvadorans, either to get in on an EVD status or otherwise, we would have a lot of problems with detention and otherwise.

I think your question really points out the broader issue; if you have specific, focused legislation just for one group and not another, that this creates some real problems with our immigration laws. It seems that this is the big thrust of Simpson-Mazzoli, as well as the Refugee Act of 1980, to get away from that kind of thing.

Senator DeConcini. Would the chairman yield for just a followup question or comment?

Senator Simpson. Indeed.

Senator DeConcini. But you are not suggesting, are you, Mr. Nelson, that you cannot make that determination as to who is El Salvadoran and who is Mexican?

Commissioner Nelson. No, no.

Senator DeConcini. You have that ability and you do that every day.

Commissioner Nelson. Yes, sir, we do. Again, if you have a volume of people pushing that kind of thing, it takes time, but, yes, we can make the determination. We think we do pretty well.

Senator DeConcini. I think you do, too. Thank you.

Senator Simpson. Just a final question and then we will go to the next panel. We have heard remarks about the level of violence or less violence in El Salvador. Let us say that we grant that the very worst of all the evidence is true, everything we have heard would be absolutely true, even isolated cases. And of course there are always indeed the poignant personal cases. That will be the case anywhere in the United States, just as it would in New York City--poignant personal cases of violence and homicide. And that happens right in that most civilized city. In fact, it happens in volume 3 times the size of what happens in El Salvador right now, today.

But let us say that all of it were true in its full form. Is it necessary then for a person to find safe haven, safe port, to come all the way to the United States of America? Is it not, I think, perfectly possible to be safe without travelling another 2,000 miles to this border once you have set foot in Honduras or Mexico? I would like your thought on that.

Secretary Abrams. I think it is possible, Mr. Chairman. There are populations of Salvadorans in Honduras and in Mexico, who are tended to by the U.N. High Commissioner for Refugees, and it is not the policy of the Mexican government to permit assaults on those people. It is a safe haven for Salvadorans.

And I think there is some indication that the reason for moving on ahead to the United States, is really a logical one, which is that this is a much richer country and life is going to be a lot better here. It is perfectly logical and understandable.

But it is not that once in Mexico there is still, a real fear of death on the part of even those who actually have a well founded fear of persecution in El Salvador.

I wonder if I could just take this opportunity while I am at the mike to remind us all of the context in which we are operating. The Spanish International Network took an exit poll during the legislative elections of March 31, these recent elections. I think it is fair to say they do about the best and most extensive polling in El Salvador.

Senator SIMPSON. Is this SIN?

Secretary ABRAMS. SIN. They interviewed 4,000 voters, which actually in that small a population, is a lot. And they did in fact predict accurately the outcome of the legislative election. But they also asked the following question: "If you had the opportunity, would you emigrate to the United States?" 67 percent, yes.

So we are operating in a context where the desire for emigration to the United States in general, I think, forms a background to all of the considerations of other refugees also.

Senator DECONCINI. Would the chairman yield?

Senator SIMPSON. Yes.

Senator DECONCINI. Is that not likely to be true of almost any country in Central America? Are you not likely to find a very high percentage, if just asked that question? Would you emigrate to the United States? The answer is yes.

Secretary ABRAMS. With the exception, perhaps, of Costa Rica, I think the answer is yes. But that is one of the reasons that we are so reluctant to do EVD for this area.

Senator DECONCINI. Yes, but, you know, that is really to me, Mr. Chairman, somewhat of a smokescreen because nobody is disputing that it is better here economically. This Senator is not saying, oh, gosh, you know, there is no reason to come to the United States because it is safer in Mexico or Panama or someplace else. I understand that. To me that is not a justification to oppose the bill. The justification to oppose the bill is that everybody is OK down there, that there is no threat to them, that they are not going to be beat up on and injured.

But, Mr. Chairman, let me ask this question, too, in relation to your last question about other safe havens and countries. Now, it is has been estimated that close to a million people have been displaced and that maybe, as Mr. Nelson says, as many as half a million are here. Does Mr. Abrams agree that Honduras, Guatemala, Mexico, Belize, Costa Rica have hundreds and perhaps hundreds of thousands of El Salvadorans staying there for the simple reason they do not want to go back to their country, because they are fearful of what is going to happen to them?

Secretary ABRAMS. I think the numbers are considerably lower than that.

Senator DECONCINI. What do you think the numbers are, because I do not know?

Secretary ABRAMS. Well, here are the numbers that we have. There are 2,000 Salvadorans in Belize, 6,100 Salvadorans in Costa Rica, roughly 21,000 Salvadorans in Honduras, 3,500 Salvadorans in Mexico, 17,500 Salvadorans in Nicaragua, and 800 in Panama.

Senator DECONCINI. That is about what, 60,000 or something or 50,000?

Secretary ABRAMS. 50,000.

Senator DECONCINI. You would not consider that a large number?

Secretary ABRAMS. Well, not compared to the number in this country.

Senator DECONCINI. Mr. Nelson, the number in this country, are you satisfied with the 500,000 being anything near a verifiable number? And, second, are most of those illegal here in your judgment? Do we have any idea how many are here legally?

Commissioner NELSON. Certainly, on the figure, Senator, we all know that estimating the number of illegal immigrants present or in a flow is very, very difficult.

Senator DECONCINI. Yes, sir.

Commissioner NELSON. And that figure of generally 300,000 to 500,000, and probably most feel the 500,000 is closer, is probably as good as you can get. I think you earlier mentioned 65,000 illegal Salvadorans in the Washington area. So, we believe that is generally a ballpark, a good ballpark figure.

As far as the legal number here, I do not know. But as Mr. Abrams indicated, we granted, I think, 8,000 immigrant visas last year. There has been an ongoing legal flow of Salvadorans for many, many years. So, certainly, there are very, very substantial numbers here legally. I do not have the figure now on that.

Senator SIMPSON. May I suggest that we move on. I really appreciate both of you being here and thank you for the effort that you perform for our country in this critically tough area to grapple with. I thank you very much, both of you.

Secretary ABRAMS. Thank you, Mr. Chairman.

Senator SIMPSON. Now we will have the second panel, Mr. Michael Myers, the Washington representative of Church World Service, and Mr. Morton Halperin, acting director of the American Civil Liberties Union.

I look forward to having your testimony. Please go right ahead with your testimony.

STATEMENTS OF A PANEL CONSISTING OF J. MICHAEL MYERS, WASHINGTON REPRESENTATIVE, CHURCH WORLD SERVICE; WADE J. HENDERSON, LEGISLATIVE COUNSEL, AMERICAN CIVIL LIBERTIES UNION; AND CAROL L. WOLCHOK, DIRECTOR, POLITICAL ASYLUM PROJECT, AMERICAN CIVIL LIBERTIES UNION OF THE NATIONAL CAPITAL AREA

Mr. MYERS. Thank you, Mr. Chairman. It is a pleasure to be here today, and I want to thank you for holding these hearings this morning.

The matter before us today, Salvadoran refugees, is one of high priority to the church community. National church bodies comprising millions of members have at their highest levels, urged a temporary halt to the deportation of Salvadoran nationals in this country unwilling to return. And last year in House hearings on the DeConcini-Moakley bill, witnesses testifying in support, included from the religious community not only us, but the National Association of Evangelicals, the U.S. Catholic Conference, and the Union of American Hebrew Congregations.

The outpouring of support in cash and kind from our churches for the Salvadoran refugees here in the United States is eclipsed in recent memory only by donations to the African famine. We support S. 377 and EVD not just because there is documentation that some people who have returned have been killed; we do it not just because some returnees have been tortured or otherwise persecuted. In our view, those victims should have been protected by the

Refugee Act of 1980. But less than 3 percent of Salvadoran asylum applications are actually approved.

Instead, we support Senator DeConcini's efforts for the same reason the United States saw fit to grant EVD to 15 nationalities in the past 25 years, because there is acute civil unrest—a civil war—in El Salvador.

A number of references have been made earlier this morning to the Refugee Act of 1980. Extended voluntary departure is not asylum, and those two debates should be held separately. It is interesting to note that there have been four grants of extended voluntary departure since the enactment of the Refugee Act of 1980, and this is the first time the issue of circumvention of the Refugee Act has come up—that is in the Salvadoran case.

It is our view that the lack of protection afforded Salvadorans in this country erodes respect for the act, and we witness that among our congregations as the United States continues to deport 300 to 400 Salvadorans each month. Only 3 percent are granted asylum. We can pursue the matter in the Federal courts, but it is interesting to note that there is an effort within the administration even to restrict the court jurisdiction over this matter.

In conclusion, I would like to make a couple of comments about numbers because I think a major reason policymakers are so fearful of taking this step is because they estimate that 300,000 to 500,000 Salvadorans are in the United States right now.

First, we are not talking about granting a temporary status to up to 500,000 people. Instead, we are talking about suspending 300 to 400 deportations monthly. Granted, with EVD or S. 377 more than that may come forward each month; however, we must remember that EVD is not a legalization. With EVD deportation is at the end of the tunnel. If people are going to be hesitant to come forward under a legalization program where this is not the case, then this hesitancy can be multiplied for Salvadorans and EVD.

Second, if large numbers of Salvadorans do submit themselves for deportation to get EVD, then that is that many more Salvadorans known to the INS than under the status quo. If 100,000 come forward, there are 100,000 more records on Salvadorans than INS would otherwise have.

Finally, the vast majority of the Salvadorans in this country have come since the beginning of the civil war in 1979. The Census Bureau projected in 1980, that there were 94,000 Salvadorans in the United States. This is not an actual count. It is a projection. And other findings tend to support this estimate.

So the premise that most Salvadorans who would benefit from EVD actually came here prior to the civil war just does not seem to holdup.

I think my time has just about ended. I want to thank the chairman again for holding these hearings; we are strongly in support of Senator DeConcini's efforts. We urge this panel to pass favorably and rapidly on S. 377. Thank you.

[Statement follows:]

NATIONAL COUNCIL OF THE CHURCHES OF CHRIST IN THE UNITED STATES OF AMERICA
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STATEMENT OF

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IMMIGRATION AND REFUGEE PROGRAM
CHURCH WORLD SERVICE

Provided by

J. MICHAEL MYERS
WASHINGTON REPRESENTATIVE

on the subject of

SALVADORAN REFUGEES, EXTENDED VOLUNTARY DEPARTURE, AND S. 377

Submitted to the

SUBCOMMITTEE ON IMMIGRATION AND REFUGEE POLICY
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

Washington, D. C.
April 22, 1985

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A Program of the Division of Overseas Ministries

Mr. Chairman, members of the Subcommittee, I am pleased by the opportunity to present to the Subcommittee today the views of the Immigration and Refugee Program of Church World Service on the subject of Salvadoran nationals seeking safe haven in the United States. I am today representing the comments of Dale S. de Haan, Director of the Immigration and Refugee Program.

Few subjects in recent memory have piqued the concern of our church people more than the humanitarian consequences of the civil war which has racked El Salvador for the past five years. Colleague churches in El Salvador are working with some of the over 500,000 Salvadorans displaced internally within their country, a number which continues to grow. These churches are assisted by the international church community, including, prominently, some of our member North American denominations. Thus we have had the unique opportunity to see, hear, and feel the torment of the people of El Salvador in a situation which President Jose Napolean Duarte recently has described as the "culture of terror" which exists in his country.

Our congregations have heard the stories told by these people of the killing of parents in front of children, and of decapitated, mutilated bodies on city streets and country roads. The consequences of military operations and combat in much of the country have been described to us. We have read the newspaper reports and seen the vivid television images of violence and civil warfare. We have read the statistics of violent death in El Salvador, numbers which exceed those of virtually any other situation of conflict in the world today.

As a natural Christian and humanitarian response to the cries and perceived needs of these suffering people, our churches have reached out to provide material, emotional, and spiritual aid. Since early 1980, when the tragic death of seven Salvadorans in the Arizona desert shocked the consciences of many Americans, increasing numbers of church members and entire congregations have become involved in aiding and ministering to Salvadorans and other Central American refugees arriving in their communities. Today, some 200 congregations have publicly declared themselves sanctuaries for these refugees, and thousands more are involved in gathering foodstuffs, clothing, and other items and assisting in other ways.

Here in the U.S., the primary source of legal and social services for Salvadorans seeking protection is the religious community--Protestants, Catholics and Jews. Church World Service, with funding from our member denominations, helps support 26 projects around the country specializing in services--legal, social or otherwise--for this group. In the past two years, Protestant denominations have donated through Church World Service over $1 million to assist these projects in their work.

Given this involvement by churches in the lives of so many Salvadorans, the outrage which we feel over the fact that our country returns 300-400 Salvadorans monthly to El Salvador should come as no surprise. We and our member denominations have consistently urged instead of returning those persons, that the option of extended voluntary departure (EVD) status be made available to them, just as has been granted in the past 25 years to 15 similarly situated national groups. But as EVD has not yet been granted to Salvadorans, virtually every major church body in this country has gone on record strongly in support of S.377 introduced by Senator Dennis DeConcini (see statements attached) and with the support of many in the Senate and House of Representatives. In hearings in the House of Representatives last year, we, the National Association of Evangelicals, the U.S. Catholic Conference, and the Union of American Hebrew Congregations all testified in support of the companion bill in that body, support which actively continues to the present.

I. EVD HAS A DEFINED USAGE IN ADMINISTRATIVE PRACTICE.

Extended voluntary departure has consistently been used in the past quarter century as a response to situations of instability and civil strife within a country. Official documents, INS Operations Instructions, and other sources provide a fairly clear history of its usage and the above-mentioned basis for it.

Nonetheless, a number of recent declarations have suggested either that its basis is ambiguous, or that EVD is an instrument of international politics. For example, a "press guidance" issued by the Department of State on May 31, 1983, stated that EVD is granted "based upon an overall assessment of our national interest, including foreign policy, immigration policy, and humanitarian interests." Most recently, INS Western Regional Commissioner Harold W. Ezell, in a letter earlier this month to Representative Joe Moakley and Senator Dennis DeConcini, stated, "Extended Voluntary Departure is a foreign relations tool." And there are available other comtemporary samplings of mistatements regarding the historical usage of EVD status.

Certainly the statutory basis for EVD is less than exhaustive and specific. (see USC 1254 (e) and 8 CFR 244.1-2) However, recent efforts by some toward a revisionist history of EVD aside, official documents regarding the past and present grants of EVD do reveal the following:

1) It is a temporary status conferred by the Attorney General, usually upon the recommendation of the Secretary of State.

2) It has been granted bacause of:

a) "unstable" or "unsettled" conditions or civil strife, and-or

b) a pattern of denial of rights.

What follows are examples of the wording used by the INS in issuing instructions on grants of EVD.

Nationality	Reason given for grant
Afghans	covered Afghanswho resist returning "because of the turmoil prevailing in that country rather than because of a fear of persecution"
Nicaraguans	"due to unsettled conditions in Nicaragua" "unstable conditions currently existing there"
Poles	"current conditions in Poland" "the U.S. and its allies have taken a number of concerted steps to convey to the Polish authorities the seriousness with which we view their continued denial of rights to the Polish people...It may be at least another six months before the U.S. and other Western

	countries will be able to ascertain whether the Polish Government is truly prepared to allow the Polish people the exercise of their human rights." "unstable conditions currently existing there"
Lebanese	"civil strife in the country continues"
Ethiopians	"There have been conflicting statements about returnees by Ethiopian officials which persuade us that a policy of caution is advisable" "under the circumstances currently prevailing there" "unsettled conditions in Ethiopia" "under the circumstances currently prevailing there."

3) Usually those conferred the status must have been in the U.S. since a particular date. This has been done to reduce the potential that future arrivals might enter the U.S. because of the existence of such a program.

4) It is generally granted for a specific duration, usually 6-12 months, and is extended in 6-12 month increments as warranted thereafter.

It is important to note what EVD has not been:

1) It has not been based upon individualized documentation of what happens to individuals upon return. Rather, as noted above, it is based upon an evaluation of the security and humanitarian conditions to which persons would be returned. While there have been documented cases of individuals killed, tortured, or otherwise harmed or oppressed upon return to El Salvador, to require the documentation of such cases as a condition predicate to a grant of EVD is inconsistent with its intent and in many respects duplicates the asylum standards and process as found in the Refugee Act of 1980.

Thus, in the past it has not been required that returnees be tracked or monitored and that the deaths or torturing of returnees be documented as a precondition for a grant of EVD. Instead, again, the documented existence of significant violence has been the test for grants of EVD.

2) It has not been based upon foreign policy considerations or used explicity as a "foreign relations tool." It has been granted to nationalities from countries with both friendly and unfriendly governments based upon considerations of instability.

For example, Afghanistan and Poland are countries whose governments have strained relations with the U.S. Nationals of those states have been granted EVD. But EVD has also been provided nationals of Lebanon and Uganda, governments with which the U.S. has friendly relations.

In this context, a grant of EVD has not been considered a hostile or unfriendly act. It is merely a recognition that, on occasion, the temporary deferral of deportations is appropriate, because of the universally recognized existence of civil strife in a country.

In the Salvadoran case, for example, it is no secret that the country is torn apart by civil war, a civil war which continues. President Jose Napoleon Duarte, of course, has little difficulty admitting to the security and stability crises which his country faces. But relevant to today's hearing is the fact that President Duarte himself on a number of recent occasions has urged greater sympathy for those fleeing El Salvador. ("Give Refugees a Chance, Duarte Urges," Los Angeles Times, November 2, 1984, p. 8.)

A useful recapitulation of the rationale for EVD is found in a recent study conducted by the Immigration and Naturalization Service. The study noted:

> From time to time unexpected crises--war, political upheaval, etc.--occur in the home country which could jeopardize the lives of visitors in the U.S. if they returned during the crises. In such situations, acting on a specific State Department recommendation, the Attorney General has permitted foreign nationals in the United States to remain until conditions in their home country stabilize. Usually the State Department cites civil war, invasion by foreign nationals, etc., as precipitating factors in this recommendation to the Justice Department....Extended voluntary departure is an administratively clean and effective response for our government to make to what are generally temporary but unsafe circumstances in other countries that are likely to improve with time. (INS, Asylum Adjudications: An Evolving Concept and Responsibility for the Immigration and Naturalization Service, 1982, pp. 65, 71.)

II. GIVEN THE HISTORICALLY DEFINED CRITERIA FOR EVD, SALVADORANS SHOULD BE AFFORDED THE STATUS.

The humanitarian impact of the Salvadoran civil war has been massive, not only in El Salvador, but also throughout the hemisphere. Some 40-50,000 civilian non-combatants have been killed in the current civil war. A proportionate amount in the United States would be close to 3 million dead, with the toll daily rising. The number of displaced persons and refugees in El Salvador and parts of Central Ameircan and Mexico is overwhelming, and indeed a major and sensitive problem for the governments of that region. And the situation has had well-known impact upon the United States and Canada as well.

Fully one-quarter of the 5-million person Salvadoran population has been displaced by the war. As the Subcommittee's Staff Report on Refugee Problems in Central America accurately points out, "during the worst days of the Vietnam War, the number of internal refugees never exceeded 8 percent of the population. In Afghanistan, it is nearly 16 percent of the population, most living as refugees in Pakistan." (p. 1) By U. S. Embassy estimates, there are now at least 525,000 displaced persons within El Salvador, an increase of 25,000 in just the past few months.

Many of the displaced persons survive in government-run camps. These camps are generally located in and around San Salvador and are supported by large infusions of assistance from governments, primarily the United States.

Large numbers of the displaced choose instead to turn to church-run camps for assistance. These camps are filled with individuals and families who may prefer anonymity. Many have sequestered themselves within church property for months at a time, fearful of death should they step outside church doors.

A measure of the hostility and suspicion which is directed toward these displaced persons is the treatment of those church representatives working with those in church camps. Church workers are frequent recipients of death threats. Many have been tortured or killed by death squads. In a recent case, Lutheran minister Rev. David Ernest Fernandez of San Miguel, who worked with displaced persons, was found dead on November 21, 1984, his body mutilated almost beyond recognition. His face had been hacked repeatedly by a machete, and a doctor's report indicated he had been tortured before being shot to death in the head. (reports from Lutheran workers in El Salvador and a Lawyer's

Committee for International Human Rights, Justice Denied, March 1985, pp. 14-17).

Recent reports from church representatives in El Salvador indicate that the violence, and thus the displaced population, continues to grow. The apparently increased aerial bombing of civilians in recent months has taken its toll in human disruption. Guerrilla forces have begun new activities in previously relatively quiet portions of the country. Recent military engagements reported in the press have shown guerrilla forces now active in the formerly combat-free west.

Additionally, guerrilla forces have carried their activities into some of El Salvador's urban areas. The recent assasination on a San Salvador tennis court of the army's public information chief, Col. Cienfuego, is but one example. Guerrillas have also in recent months attacked public buildings such as town halls. Each of these actions by guerrilla troops prompts responses by government forces. When a town hall is attacked, for example, the government responds with aerial bombing and troop attacks.

Another example of the continued breakdown of order in El Salvador is that there is virtually no justice for families of the 40,000-50,000 civilian non-combatants killed in the past five years. The conviction of the four American churchwomen, "stands alone, as a 'showcase trial'...Since that trial, there have been no other successful prosecutions of members of the Salvadoran security forces for political killings." (Justice Denied, March 1985, pp. 1-2.)

While there has been a marked decrease in so-called "death squad" activity, these paramilitary groups continue to operate with impunity. As the State Department Bureau of Human Rights and Humanitarian Affairs reports, "The brutal phenomenon known as 'death squad' assassination activity has not been completely extirpated but has declined dramatically . . ." (Country Reports on Human Rights Practices for 1984 p. 513). The decrease, while a comforting trend, still leaves death squad activity fantastically high. Tutela Legal, the Catholic archdiocesan human rights monitor, reported 40 death squad killings in the last six months of 1984, a significant drop from the 185 assassinations in the first half of the year. (America's Watch, "Preliminary Report on the Human Rights Situation During the Last Six Months of 1984", January 20, 1985, p. 61.)

The picture which emerges is one in which fewer and fewer sectors of the country are immune to the violence and "culture of terror" which President Duarte describes. Government forces have increased their bombing attacks; guerrilla forces have expanded their bases of operation into new areas of the country and into the cities; and death squad activities, while significantly reduced, remain unacceptably high.

Illustrative of this situation is the following article which appeared in the International Herald Tribune (Paris), February 26, 1985:

> SAN SALVADOR -- The Roman Catholic Church has noted a marked increase in the death toll in El Salvador's civil war, with 157 deaths reported in a recent seven-day period.
>
> An auxiliary bishop, Gregorio Rosa Chavez, said in a sermon Sunday that the Catholic human rights agency recorded 157 killings of civilians, rebels, and army troops between February 15 and last Thursday. The number was almost three times the number killed in the previous week.
>
> The bishop (Gregorio Rosa Chavez) criticized leftist guerrillas for the "cruel and unjust" execution of several civilians; he said paramilitary rightist death squads were continuing to execute Salvadoran refugees who returned to the country.

III. S.377 IS CONSISTENT WITH HISTORICAL USES OF EVD.

Given the established precedent of deferring the deportations of certain nationalities at risk, the temporary suspension of deportations as found in S.377 represents no departure from past practice. It is responding to a situation of instability in El Salvador. The suspension is temporary and covers only those Salvadoran nationals in the U.S. as of a particular date (date of enactment).

An important technical point to note is that the Congressionally mandated suspension of deportation, as proposed in S.377, is not extended voluntary departure. EVD, being a discretionary administrative authority, would, in our view, be inappropriate for the Congress to legislate. A suspension of deportation, as compared with EVD, more clearly rests within the prerogative of the Congress as it does not involve executive discretion.

S.377 adds to the EVD tradition one twist--a non-partisan study (by the General Accounting Office) of security and humanitarian conditions which returnees might face. The study, along with other sources, should provide the Congress with valuable information critical to the formation of policy toward Salvadoran nationals in this country and elsewhere in the region.

IV. SALVADORANS IN THE U. S. ARE IN A LEGALLY PRECARIOUS SITUATION

The United States is the only country in this hemisphere which makes a policy of deporting Salvadorans back to El Salvador. While other governments in the region may threaten refugees, or may be unwilling or unable to protect them, the instance of actual deportations to El Salvador has been rare indeed. The latest statistics available indicate that the U. S. returns 300-400 Salvadorans monthly to El Salvador.

It is estimated that there are now 300-500,000 Salvadorans in the United States, though reliable estimates are not available. What is clear, however, is that the vast majority of Salvadorans here came after the beginning of the current civil war in late 1979. Using commonly accepted formulas for estimating populations from actual counts, the Bureau of the Census concluded in 1980 that approximately 94,000 Salvadorans were in the U. S. at that time, both legally and illegally.

From 1980 to 1983, most Salvadorans who returned to El Salvador agreed to depart voluntarily, rather than face formal deportation. However, it was discovered that Salvadorans were not being properly advised of their rights, including such matters as right to counsel, and that coercive tactics were being used by the INS to obtain voluntary departures. Many Salvadorans signed voluntary departure forms without knowing what they were. Still others were given the impression that voluntary departure was their only option.

In *Orantes-Hernandez v. Smith*, the Court enjoined the INS *inter alia* to advise Salvadorans more clearly of their rights.

With the court-ordered procedures in place, deportations began to exceed voluntary departures.

Required Departures

	Deportations	Voluntary Departures	Total
1981	2,426	8,262	10,688
1982	1,677	3,454	5,130
1983	3,175	1,627	4,802

Few Salvadorans actually apply for asylum. It is presumed that this is primarily due to the extremely low acceptance rates for Salvadorans. Currently, INS District Directors grant asylum to less than 3 percent of Salvadoran applicants.* Most Salvadorans, therefore, apply for asylum only upon being arrested for deportations. In fact, in one INS district (Harlingen, TX), the District Director will accept only asylum applications tendered in the course of deportation proceedings. Applicants in this case must first present themselves for deporation before applying for asylum.

Asylum Statistics Comparison of FY83 and FY84 for Selected Countries

Country	Total Considered		Total Granted		Percentage Granted	
	83	84	83	84	83	84
Afghanistan	100	455	53	186	53.0	40.9
China	49	207	7	15	14.3	7.3
Cuba	225	488	5	16	2.2	3.3
El Salvador	**2985**	**13373**	**71**	**328**	**2.4**	**2.5**
Ethiopia	238	1319	67	305	28.2	23.1
Ghana	11	65	5	15	45.5	23.1
Guatemala	68	761	1	3	1.5	.4
Haiti	95	375	1	23	1.0	6.1
Iran	2321	8232	1760	5016	75.8	60.9
Iraq	132	327	4	38	3.0	11.6
Lebanon	175	534	1	16	.6	3.1
Nicaragua	1440	8292	94	1018	6.5	12.3
Philippines	31	144	3	36	9.7	25.0
Poland	1161	2203	261	721	22.5	32.7
Romania	86	404	38	158	44.2	39.1
Somalia	48	237	2	34	4.2	14.3
South Africa	5	17	0	7	0.0	41.2
USSR	23	88	18	45	78.3	51.1
Uganda	24	152	5	49	20.8	32.2

The following statistics include all of the countries, including countries not listed in the selection above.

Total Cases Considered:	9798	40621	2479	8277	25.3	20.4

---

* Statistics are not kept by Immigration Judges. However, attorneys representing Salvadoran Clients report virtually no grants of asylum.

While the estimates on the numbers of Salvadorans in the U. S. often appear overwhelming, the relevant statistics must be kept in perspective. A suspension of deportation, as found in S. 377, in reality protects only those who would present themselves for deportation, which as noted above is currently 300-400 persons monthly. Doubtless, upon passage of S. 377, a greater number will submit themselves for deportation. However, experience in other immigration programs indicates that a number significantly less than the total population will actually come forward.

An "escape valve" recently made available to Salvadorans in the U. S. is Canada. Last year, U. S. Churches, working with Canadian consulates in the U. S. and sponsoring churches in Canada, arranged the acceptance of almost 400 Salvadorans from the U. S. as refugees. This is in addition to the over 2,000 refugees which Canada resettled from Central America. (Annual Report to Parliament on Future Immigration Levels, November 1984.)

Conclusion

As the conflict in El Salvador continues to take its toll on that populace, the urgency with which churches view the necessity of S. 377 will only increase. While there may continue to be debate on Central American policy, there should be no debate that people in El Salvador are daily being victimized. S. 377 is a reasonable, modest proposal, well-grounded in the humanitarian customs and practices of this country.

We therefore urge the Subcommitee, in the strongest possible terms, to pass favorably upon this important legislation.

Thank you.

Excerpts from religious statements in support of extended voluntary departure for Salvadorans

THE BIENNIAL SESSION OF THE AMERICAN BAPTIST CHURCHES/USA JUNE, 1983
STATEMENT OF CONCERN (EXCERPTS)
PEACE WITH JUSTICE IN CENTRAL AMERICA

we urgently call upon all governments to:

--Grant temporary asylum to Central American refugees until they can safely return to their countries;

AMERICAN FRIENDS SERVICE COMMITTEE

PUBLIC STATEMENT IN URGENT CONCERN FOR THE PLIGHT OF JANUARY 22, 1983
CENTRAL AMERICAN REFUGEES ENDORSED BY THE BOARD OF DIRECTORS

2. There must be an end to the violation of the refugees' basic rights, including the lack of due process, unlawful detention, and, most of all, an end to the deportations that have sent refugees back to face great danger, even death. We call on the U.S. government to grant extended voluntary departure or political asylum in accordance with the definition of refugee on the UN Convention and Protocol which was incorporated into the 1980 U.S. Refugee Act, to refugees from Central America.

RESPONSE TO CONFLICT IN CENTRAL AMERICA JUNE, 1983
RESOLUTION ADOPTED BY THE CHURCH COUNCIL (ALC)

RESOLVED, that the Church Council ask the government of the United States to:

d. Grant legal asylum (with refugee or extended-voluntary-departure status) to the many Central Americans who have recently emigrated to this country and remain under threat of deportation to life-threatening situations in their countries of origin; and be it further

CHURCH OF THE BRETHREN

ANNUAL CONFERENCE RESOLUTION ON EL SALVADOR JUNE, 1981

Send a letter to President Reagan and Secretary of State Haig asking our government to:

grant temporary refugee status to Salvadorans who have fled their country, and immediately stop the illegal deportations by the Immigration and Naturalization Service.

CHRISTIAN CHURCH (DISCIPLES OF CHRIST)

GENERAL ASSEMBLY RESOLUTION
CONCERNING FIRST ASYLUM IN THE UNITED STATES (EXCERPTS) SEPTEMBER, 1983

BE IT RESOLVED, that the General Assembly call upon the government of the U.S. to:

grant Extended Voluntary Departure status in appropriate cases such as that of Salvadorans and Guatemalans; and

LETTER OF THE BISHOPS IN THE EPISCOPAL CHURCH APRIL, 1981

We call upon the State Department to grant to all Salvadorans entering this country in flight from the violence in their homeland the status of extended voluntary departure, even as previously extended by this country under similar conditions to refugees of Viet Nam, Laos and the Khmer Republic.

MENNONITE CHURCH

GENERAL ASSEMBLY RESOLUTION ON CENTRAL AMERICA (EXCERPTS) AUGUST, 1983

We call on the U.S. government to stop deporting Salvadoran and Guatemalan refugees as illegal aliens and to grant these refugees "extended voluntary departure" status.

RELIGIOUS SOCIETY OF FRIENDS

MINUTE OF THE NEW YORK YEARLY MEETING JULY, 1983

New York Yearly Meeting of the Religious Society of Friends urges the U.S. government to end the current policy of forced deportation from the U.S. of refugees from Central America and to offer humanitarian asylum to those refugees.

NEW ENGLAND YEARLY MEETING
MINUTE ON U.S. INVOLVEMENT IN CENTRAL AMERICA AUGUST, 1983

We also call upon the U.S. government to cease its deportations of the victims of violence in Guatemala and El Salvador who have fled to this country, and realistically to grant them extended voluntary departure status or political asylum in accordance with the definition of a refugee of the UN Convention and Protocol which was incorporated in the 1980 U.S. Refugee Act. We urge Monthly Meetings and individuals within the Yearly Meeting to communicate these concerns to the President, the Congress, the Department of State and the Justice Department.

PRESBYTERIAN CHURCH, USA

GENERAL ASSEMBLY RESOLUTION ON CENTRAL AMERICA (EXCERPTS) JUNE, 1984

Calls upon members of Congress to support legislative initiatives to grant extended voluntary departure status to Central American refugees or otherwise to protect their right to remain in the U.S.

195TH GENERAL ASSEMBLY
ADVENTURE AND HOPE: CHRISTIANS AND THE CRISIS IN CENTRAL AMERICA (EXCERPTS) JUNE, 1982

This Assembly also petitions the U.S. government through appropriate channels to:

1. Adopt a policy granting Extended Voluntary Departure status, Temporary Residence status, or refugee status in accordance with the definition of "political refugees" as established by the UN High Commissioner on Refugees and by U.S. law;
2. To stop deportations of these persons;

Therefore, this Assembly calls upon the U.S. government to:

7. Recognize Salvadorans seeking asylum as political refugees;
8. End immediately the deportation of Salvadoran nationals;

RABBINICAL ASSEMBLY

RESOLUTION ON CENTRAL AMERICAN REFUGEES MAY 1984

THEREFORE, BE IT RESOLVED

(1) that the Rabbinical Assembly endorses the concept of sanctuary as provided by the synagogues, churches, and other communities of faith in the United States; and

(2) that the Rabbinical Assembly urges the government of the United States to provide "Extended Voluntary Departure" status for those fleeing the violence in Central America.

UNION OF AMERICAN HEBREW CONGREGATIONS

BOARD OF TRUSTEES RESOLUTION ON EL SALVADOR MAY, 1984

THEREFORE, BE IT RESOLVED that the Union of American Hebrew Congregations:

6. Urge the United States government to receive Salvadoran refugees in the United States and to allow them to remain in the United States.

UNITED CHURCH OF CHRIST

GENERAL SYNOD RESOLUTION ON REFUGEES JUNE, 1983

BE IT RESOLVED that the Fourteenth General Synod through the office of the President issue an immediate call to all pastors and congregations urging an active advocacy campaign to call upon the U.S. government to grant to El Salvadoran and Guatemalan nationals seeking refuge in our country the privilege of "extended voluntary departure status" until they can return home with a reasonable degree of safety.

BE IT FURTHER RESOLVED that the Fourteenth General Synod applauds those congregations granting sanctuary to El Salvadorans and Guatemalans, and encourages all our congregations to consider providing sanctuary until such time as extended voluntary departure status is granted.

UNITED METHODIST CHURCH

RESOLUTION OF THE GENERAL CONFERENCE MAY, 1984
CONCERN FOR HUMAN RIGHTS IN CENTRAL AMERICA (EXCERPTS)

we call upon the government of the U.S. to:

g. grant "extended voluntary departure status" for persons fleeing repression and war in Central America.

UNITED METHODIST CHURCH

RESOLUTION OF THE GENERAL ASSEMBLY 1984
ASSISTANCE AND SACTUARY FOR CENTRAL AMERICAN REFUGEES

THEREFORE, BE IT RESOLVED that the General Conference of The United Methodist Church strongly:

1. Urge the President of the United States, the Department of State, and Department of Justice, and the Congress, to grant "extended voluntary departure" legal status to refugees from El Salvador and Guatemala, and other areas of the Caribbean and Latin America.

UNITED METHODIST CHURCH GENERAL BOARD OF GLOBAL MINISTRIES APRIL, 1983
RESOLUTION ON FIRST ASYLUM AND REFUGEES

As an expression of our faith in God seeking justice and love for our neighbor, the General Board of Global Ministries calls upon local congregations in the United Methodist Church to engage in active advocacy campaign to call upon the U.S. Government

d. to seriously consider granting to Salvadoran and other Central Americans seeking refuge in this country the privilege of "extended voluntary departure" until they can return home with a reasonable degree of safety;

CHURCH WORLD SERVICE IMMIGRATION AND REFUGEE PROGRAM COMMITTEE

RESOLUTION ON FIRST ASYLUM

WHEREAS an important historical ideal of the United States is to grant refuge to those fleeing persecution and civil strife;

WHEREAS the Christian community has traditionally upheld the concept of providing safe haven and sanctuary to such persons in need;

WHEREAS the United States has become a country of "first asylum" for Salvadorans, Guatemalans, Haitians and others seeking refuge from persecution and/or civil strife in their homelands; and

WHEREAS the United States is failing to live up to its moral responsibilities and legal obligations to provide protection and due process to those seeking temporary safe haven or political asylum here:

THEREFORE BE IT RESOLVED that the Church World Service Immigration and Refugee Program Committee reaffirms, as an expression of our faith in God seeking justice and love for our neighbors, the concept and practice of providing refuge to persons in this country who have fled persecution and/or civil strife in their homelands, call on the Government of the United States to:

1. Recommit itself to the principle of non-refoulment (no forced return) of those seeking refuge in this country,

2. Grant temporary safe haven through extended voluntary departure status to groups needing such protection, in particular to Salvadoran and Guatemalan nationals who have fled to the US since 1980, until they can return home in safety, and

3. Insure fair and expeditious consideration, with full due process, for all persons requesting political asylum status.

BE IT ALSO RESOLVED that the Church World Service Immigration and Refugee Program Committee urge the constituent bodies, congregations and individuals of its member communions to engage in advocacy to help bring about the full implementation of these measures, which reflect the humanitarian traditions of this Nation and the concerns of Christian faith and practice.

Adopted Unanimously
May 25, 1983

Adopted by Church World Service
Committee, May 27, 1983

WASHINGTON,

Afghan

2 DEC 1980

FILE: CO 243.56-P

HUGH J. BRIEN, DETENTION AND DEPORTATION 633-3335

X X X
X

ROCOM (ROODP) (ROEXM). RE: DEFERRED DEPARTURE FOR AFGHAN NATIONALS. AS RECOMMENDED BY THE DEPARTMENT OF STATE AND CONCURRED IN BY INS, NO AFGHAN NATIONALS CURRENTLY IN THE UNITED STATES EXCEPT THOSE WHO HAVE ENGAGED IN SERIOUS CRIMINAL ACTIVITIES, SHOULD BE FORCED TO RETURN TO AFGHANISTAN. THOSE AFGHANS WHO APPLY FOR ASYLUM AND CAN ESTABLISH A WELL-FOUNDED FEAR OF PERSECUTION SHOULD BE ACCORDED ASYLUM. THOSE ALIENS WHO DO NOT APPLY FOR ASYLUM BUT RESIST RETURNING TO AFGHANISTAN BECAUSE OF THE TURMOIL PREVAILING IN THAT COUNTRY RATHER THAN BECAUSE OF A FEAR OF PERSECUTION, SHOULD BE GRANTED EXTENDED VOLUNTARY DEPARTURE AND WORK AUTHORIZATION IN INCREMENTS OF ONE YEAR. A COPY OF THE DEPARTMENT OF STATE POLICY MEMO WILL FOLLOW. GENED ALL REGIONS. RETIL ALL DISTRICTS (X FOREIGN), ALL FCO'S (X FOREIGN).

P.W.
11/25

COEMF

May 31, 1983

[illegible]

Granting of Extended Voluntary Departure (EVD) requires the most careful assessment of the situation of the countries concerned. EVD is granted by the Attorney General, usually upon the recommendation of the Department of State, to aliens in the United States based upon an overall assessment of our national interest, including foreign policy, immigration policy, and humanitarian issues. It means that those who would otherwise be deported from the United States are permitted to remain here. EVD is not appropriate for Salvadorans at the present time because it would encourage further illegal immigration to the US from El Salvador, a country from which there has long been substantial illegal immigration. Moreover, Salvadorans in the US passed through other countries before they arrived here in which they could have obtained refuge.

IMMIGRATION & NATURALIZATION
SERVICE
WASHINGTON, D.C. 20536

PRIORITY UNCLASSIFIED

FILE: CO 242.1-P 12/4/78 DEC 197

HUGH J. BRIEN, DETENTION & DEPORTATION 376-8457

X

ALL REGIONS

REFER CO 242.1-P of 7-1-76. THERE STILL IS NO BLANKET POLICY TO GRANT EXTENDED VOLUNTARY DEPARTURE TO NATIONALS OF LEBANON IN THE UNITED STATES WHO HAVE OVERSTAYED. HOWEVER, THE CIVIL STRIFE IN THAT COUNTRY CONTINUES AND THIS IS TO REAFFIRM THAT OFFICERS SHOULD, ON A CASE BY CASE BASIS, VIEW SYMPATHETICALLY REQUESTS FOR EXTENDED VOLUNTARY DEPARTURE WHERE SUCH REQUESTS ARE BASED UPON COMPELLING HUMANITARIAN NEED.

CODDP

CC: Official file
~~CO 243.99~~
Division log

CODDP:JSTurnage:sdf 12-4-78

UNCLASSIFIED

VOL. 60, No. 1
JAN 7, 1983

Poles

APPENDIX I

Department of State
Washington
December 18, 1982

Dear Mr. Attorney General:

As you are aware, since last December it has been Administration policy not to enforce the departure of Polish Nationals to Poland. In view of the policy of the United States toward the Government of Poland, reiterated by the President on December 10, the Department of State believes the "non-enforcement of departure" policy for Polish nationals should be maintained for a further six months, to June 30, 1983. In a letter of November 22 to Secretary Shultz, Senator Charles Percy stated his support for such an extension. I understand that Senator Percy has also written to you on this subject.

There have been signs that the Polish martial law authorities may eventually permit the Polish people to enjoy some of the human rights denied them since last December. However, the Polish Government's announcement of December 13 indicated that when martial law is officially suspended on December 31, other "emergency measures" will be put in place that will continue official deprivation of certain human rights and facilitate rapid reimposition of martial law should the Polish people seek to exercise their rights fully.

As you know, concern for human rights forms a significant component of overall U.S. foreign policy. In particular, with respect to the situation in Poland, the U.S. and its Allies have taken a number of concerted steps to convey to the Polish authorities the seriousness with which we view their continued denial of rights to the Polish people and our insistence that these rights be restored. Since the declaration of martial law last December, Polish nationals in the United States and in Western Europe have not been deported to Poland. It is estimated that some 200,000 Poles have been permitted to remain in Western European countries. It may be at least another six months before the United States and other Western countries will be able to ascertain whether the Polish Government is truly prepared to allow the Polish people the exercise of their human rights.

For these reasons the Department requests that the present policy of not enforcing the departure of Polish nationals from the United States, which is scheduled to lapse on December 31, be extended for a six month period. I would be grateful if this request could receive your early attention.

Sincerely,

Kenneth W. Dam
Acting Secretary

INTERPRETER RELEASES
An information service on immigration, naturalization and related matters

Ethiopans + Poles

Maurice A. Roberts Editor

American Council
For Nationalities Service
20 West 40th St., New York, N.Y. 10018

Vol. 59, No. 26 July 9, 1982

RECENT SIGNIFICANT DEVELOPMENTS

1. INS to Revise Policy on Extended Voluntary Departure for Ethiopians
2. INS Defers Enforced Departure of Polish Nationals to End of 1982
3. Immigration Judges Become General Attorneys
4. Congressional Veto Power on Suspension to be Reargued
5. Supreme Court Invalidates Denial of "In-State" Status to Domiciled G-4s
6. Puerto Rico Held to Have Standing to Challenge Discrimination
7. Goelz Address to AILA Published
8. INS Extends Comment Time on Proposed Student Regulations
9. INS Issues Instructions on Foreign Students
10. Travel Document Requirements Changed for Entry into Canada

1. INS to Revise Policy on Extended Voluntary Departure for Ethiopians

As a result of a reversal of position on the part of the State Department, the INS is in process of formulating new instructions on extended voluntary departure for Ethiopians. As we go to press, those instructions have not yet been announced.

On the basis of a letter from the State Department asserting conditions in Ethiopia have stabilized, the INS last August rescinded all previous policy statements concerning the blanket grant of voluntary departure to Ethiopian nationals. Service pressure on Ethiopians illegally in the U.S. to depart created consternation in quarters familiar with conditions in Ethiopia. Reexamination by the State Department has led it to reconsider its position and it recently wrote the Department of Justice that Ethiopians here since before January 1, 1980 should be allowed to remain. That letter has now made its way to INS, and new instructions are being drafted there.

Prior Service policy on Ethiopians is discussed in Interpreter Releases, Vol. 58, No. 37, September 17, 1981, pp. 468, 482-483; Vol. 55, No. 39, October 13, 1978, pp. 390-391; and Vol. 54, No. 46, November 11, 1977, pp. 393-394.

2. INS Defers Enforced Departure of Polish Nationals to End of 1982

The following is the text of an INS Central Office wire to all field offices dated June 21, 1982, file CO 243.85-P:

INTERPRETER RELEASES is published 50 times a year and reports on legislative, administrative and judicial developments affecting aliens.
Subscription inquiries: ACNS, 20 W. 40th St., New York, N.Y. 10018
[illegible] should be addressed to the Editor, Interpreter Releases, 815 15th Street, N.W., Suite 509, Washington, D.C.
[illegible] ACNS, 20 W. 40th Street, New York, New York 10018
[illegible]

Poles

IR Vol. 59, No. 15
April 15, 1982

nonimmigrant classification from F-1 to H-1 retroactively authorized the alien's intervening employment by the H-1 employer, for purposes of INA §245(c). The INS thereafter cautioned its field offices that the Tan decision was based on its own unique facts and set no precedent. See Interpreter Releases, Vol. 58, No. 32, August 14, 1981, pp. 419-420; Vol. 58, No. 40, October 17, 1981, pp. 525-526.

Although requested to reconsider its position, the INS Central Office has adhered to its prior view. In a wire to all field offices dated March 29, 1982, file CO 245-P and 248-P, Associate Commissioner Andrew J. Carmichael, Jr. stated:

> THIS REAFFIRMS SERVICE POLICY STATED IN CO TELEX OF 8/5/81 RE INS POSITION ON MATTER OF TAN (BIA 6-24-80). IT REMAINS SERVICE POLICY THAT EMPLOYMENT UNDERTAKEN PRIOR TO DECISION ON AN APPLICATION FOR CHANGE OF NONIMMIGRANT STATUS UNDER SECTION 248 IS UNAUTHORIZED AND WOULD FALL UNDER THE "UNAUTHORIZED EMPLOYMENT" PROVISION OF SECTION 245(C). SERVICE OFFICES ARE REMINDED THAT 8 CFR 248.1 DOES NOT ALLOW A DISTRICT DIRECTOR IN ADJUDICATING A CHANGE OF NONIMMIGRANT STATUS APPLICATION TO EXCUSE ANY FAILURE TO MAINTAIN STATUS OTHER THAN OVERSTAY. EMPLOYMENT AUTHORIZATION FOR THE BENEFICIARY OF AN H OR L PETITION WHO IS IN THE UNITED STATES TAKES EFFECT ONLY ON THE DATE AN I-506 APPLICATION IS APPROVED. REPEAT, EMPLOYMENT UNDERTAKEN PRIOR TO ACQUISITION OF THE APPROPRIATE NONIMMIGRANT CLASSIFICATION IS UNAUTHORIZED AND THE SERVICE HAS NO ALTERNATIVE BUT TO APPLY THE STATUTORY PROVISIONS OF SEC. 245(C) IN A SUBSEQUENT APPLICATION FOR PERMANENT RESIDENCE.

3. INS Defers Enforced Departure of Polish Nationals to June 30, 1982

In an Interpreter Releases Bulletin dated December 29, 1981, p. 697a, we noted that the INS had notified its field offices not to enforce the departure of Polish nationals in the U.S. until the situation in Poland is clarified. Implementing instructions were later issued on January 21, 1982, precluding enforced departure before March 31, 1982. See Interpreter Releases, Vol. 59, No. 5, January 30, 1982, pp. 85-86. The deadline has now been extended to June 30, 1982. A Department of Justice press release dated March 26, 1982 states:

> The Immigration and Naturalization Service (INS) announced today that it has extended until June 30 its policy of deferring enforced departure of Polish nationals from the United States.
>
> Commissioner Alan C. Nelson said the action was based on a request from the Department of State that took into account current conditions in Poland.
>
> "We have extended the policy for a three-month period, at which time we will request a further appraisal of the situation from the Department of State," Nelson said.
>
> Under this policy, INS will not take action to enforce departure to Poland of Polish nationals who indicate an unwillingness to return there. However, these provisions do not apply to Polish nationals willing to return to Poland; to Polish nationals who were residents of a third country; or to those who have been convicted of criminal acts in the United States.
>
> INS field offices were initially directed on December 23 not to enforce departure to Poland because martial law was declared in that country. The policy was due to expire on March 31.

> WITH REFERENCE TO TELEGRAMS CO 243.10-P OF 12/23/81, 1/25/82, AND 3/25/82 RE: POLISH NATIONALS IN THE UNITED STATES AS OF DECEMBER 23, 1981, WHO ARE UNWILLING TO RETURN TO POLAND. THE DEPARTMENT OF JUSTICE, UPON RECOMMENDATION OF THE DEPARTMENT OF STATE (DOS), HAS AUTHORIZED EXTENSION OF THE JUNE 30, 1982 DEFERRED DEPARTURE DATE TO DECEMBER 31, 1982. THIS DECISION WAS MADE IN LIGHT OF THE FURTHER CLARIFICATION OF THE SITUATION IN POLAND DURING THIS PAST THREE-MONTH DEFERRED DEPARTURE PERIOD AND THE CONSEQUENT FULL ASSESSMENT BY DOS, WHICH CONCLUDES THAT THE SITUATION IN POLAND HAS NOT ONLY WORSENED BUT THAT THE PRESENT CONDITIONS THERE ARE LIKELY TO PERSIST FOR AT LEAST ANOTHER SIX MONTHS.
>
> THOSE POLISH NATIONALS WHOSE DEPARTURE HAS BEEN DEFERRED UNTIL DECEMBER 31, 1982 AND WHO ESTABLISH APPROPRIATE NEED MAY BE AUTHORIZED PERMISSION TO WORK, AS PROVIDED IN 8 CFR 109.1(b).

For prior material on this subject, see Interpreter Releases Bulletin dated December 29, 1981, p. 697a, and Interpreter Releases, Vol. 59, No. 5, January 30, 1982, pp. 85-86, and No. 15, April 19, 1982, p. 260.

3. Immigration Judges Become General Attorneys

According to a source we have in the past found to be reliable, effective July 11, 1982, the position of Special Inquiry Officer (now called Immigration Judge pursuant to INS regulation) will be reclassified to General Attorney, in the GS-905 series, at Grade 15. Special Inquiry Officers are statutory officers, defined in INA §101(b)(4). Under INA §236, exclusion proceedings must be conducted before a Special Inquiry Officer and under INA §242(b), deportation proceedings must be conducted before a Special Inquiry Officer. A number of vacancies exist in various parts of the country and the time for submitting applications has been extended to July 16, 1982.

The General Attorney, GS-905, is an excepted position which can be filled without regard to the competitive examination requirements generally applicable and which consequently does not have the resulting competitive status. The presently sitting Immigration Judges, who do have competitive status, will continue to have that status following their reclassification as General Attorneys. However, the newly-appointed General Attorneys will not have that status.

At hearings before the Senate Judiciary Subcommittee on Immigration and Refugee Policy on October 14 and 16, 1981, there was considerable testimony critical of the fact that Immigration Judges are so dependent on the INS. Various recommendations were made to separate the Immigration Judges from the INS and place them with the BIA in a separate agency within the Department of Justice or in an independent Article I Immigration Court. (The hearings were recently printed by the Senate Judiciary Committee, Serial No. J-97-66). The Simpson-Mazzoli bill contains provisions designed to give greater independence to such adjudicators and the Department of Justice has plans to get a reorganization under way by October 1, 1982, without awaiting enactment of further legislation. See Interpreter Releases, Vol. 59, No. 12, March 24, 1982, p. 194. Whether the reclassification of Special Inquiry Officers as General Attorneys will add to their independence remains to be seen.

4. Congressional Veto Power on Suspension to be Reargued

On July 2, 1982, the Supreme Court restored to its calendar for reargument at its next term the cases involving the validity of the Congressional reservation of a veto power over administrative grants of suspension of deportation. The issue

INTERPRETER RELEASES

An information service on immigration, naturalization and related matters

Poles

Maurice A. Roberts, Editor
Carolyn Waller, Asst. Editor

American Council
For Nationalities Service
20 West 40th St., New York, N.Y. 10018

Vol. 59, No. 5

January 30, 1982

RECENT SIGNIFICANT DEVELOPMENTS

1. INS Implements Instructions on Deportation to Poland
2. INS Supplies Answers to Refugee and Asylum Questions
3. District Court Enjoins INS Investigatory Practices
4. District Court Orders Open Deportation Hearings at El Centro
5. President Redelegates Authority on Assistance to Cuban/Haitian Entrants
6. Rules for Proof of SSI Eligibility Published
7. INS Disavows Attorney Fee Liability Under Equal Access to Justice Act
8. Recent Publication
9. Immigration Seminars Announced

1. INS Implements Instructions on Deportation to Poland

In an Interpreter Releases Bulletin dated December 29, 1981, p. 697a, we quoted the INS wire of December 23, 1981, concerning enforced departure to Poland. On January 21, 1982, the INS Central Office wired the following implementing instructions to its field offices (File CO 243.10-P):

> EFFECTIVE IMMEDIATELY, THE FOLLOWING POLICY SHALL BE IMPLEMENTED RELATIVE TO POLISH NATIONALS AMENABLE TO DEPORTATION OR EXCLUSION PROCEEDINGS, WHO WERE IN THE UNITED STATES AS OF DECEMBER 23, 1981. SERVICE ACTION SHALL NOT BE TAKEN TO ENFORCE DEPARTURE TO POLAND, PRIOR TO MARCH 31, 1982, OF POLISH NATIONALS WHO ARE RESIDENTS OR FORMER RESIDENTS OF POLAND AND WHO INDICATE AN UNWILLINGNESS TO RETURN TO POLAND AT THE PRESENT TIME UNDER THE UNSTABLE CONDITIONS CURRENTLY EXISTING THERE. EXTENSIONS OF TEMPORARY STAY MAY BE GRANTED TO THOSE NON-IMMIGRANTS WHO QUALIFY FOR SUCH EXTENSIONS. IF AN APPLICATION IS DENIED, THE POLISH NATIONAL'S DEPARTURE SHALL NOT BE ENFORCED PRIOR TO MARCH 31, 1982. POLISH NATIONALS WHO ARE LOCATED AS DEPORTABLE ALIENS WILL BE PERMITTED TO REMAIN UNTIL MARCH 31, 1982. DEPORTATION HEARINGS WILL BE POSTPONED UNTIL AFTER MARCH 31, 1982, FOR THOSE POLISH NATIONALS FOR WHOM OSC'S HAVE BEEN ISSUED AND HEARINGS HAVE NOT COMMENCED. THOSE HEARINGS FOR POLISH NATIONALS WHICH HAVE COMMENCED SHALL GO FORWARD; HOWEVER, DEPARTURE SHALL NOT BE ENFORCED PRIOR TO MARCH 31, 1982. IN THOSE CASES WHERE A FINAL ORDER OF DEPORTATION HAS BEEN ENTERED, DEPARTURE SHALL NOT BE ENFORCED PRIOR TO MARCH 31, 1982.
>
> THE FOREGOING PROVISIONS SHALL NOT APPLY TO THOSE POLISH NATIONALS WHO HAVE NOT EVIDENCED AN UNWILLINGNESS TO RETURN TO POLAND; TO POLISH NATIONALS WHO WERE RESIDENTS OF A THIRD COUNTRY; OR HAVE BEEN CONVICTED OF CRIMINAL ACTS IN THE UNITED STATES. IN SUCH CASES, WHERE A DISTRICT DIRECTOR PROPOSES TO ENFORCE THE DEPARTURE OF A POLISH NATIONAL TO POLAND, PRIOR TO MARCH 31,

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[illegible]

APPENDIX III

Sept. 17, 81

Ethiopia

Blanket voluntary departure for Ethiopians

26 AUG 1981

CO 243.79-P

Regional Commissioner (ROENF):
Western Region Southern Region
Northern Region Eastern Region

Doris M. Meissner
Acting Commissioner

The attached letter from the Deputy Secretary of State indicates that the automatic grant of voluntary departure to nationals of Ethiopia can no longer be justified. Accordingly, all previous policy statements concerning blanket grant of voluntary departure to nationals of Ethiopia are rescinded.

The attached letter and a copy of this memorandum should be disseminated to all field offices and shall be utilized as guidance in handling requests for voluntary departure on a case-by-case basis.

The Department of State has further advised me that a decision concerning blanket grants of voluntary departure for nationals of Uganda is still pending. I will advise you of Department of State's recommendation in this matter when received.

Attachment

* * *

THE DEPUTY SECRETARY OF STATE
WASHINGTON

August 8, 1981

Dear Ms. Meissner:

Since Ethiopia's revolution took place in 1974 the Department of State has been recommending to the INS that Ethiopians in the U.S. who can demonstrate a well-founded fear of persecution be granted political asylum, and that because of unsettled conditions in Ethiopia, Ethiopians whose asylum applications were not approved should not be deported to Ethiopia, but should be allowed to remain here temporarily in voluntary departure status and should be permitted to work. This position was reaffirmed to the INS most recently in a July 18, 1980 letter from the Coordinator for Refugee Affairs (attached).

As indicated by the Department's most recent report on human rights conditions in Ethiopia (attached), we continue to believe that there may be Ethiopian asylum applicants in the U.S.--as well as Ethiopian applicants elsewhere in the world--who can demonstrate a well-founded fear of persecution if they were to return home. These applicants should continue to be granted asylum or refugee status, as the case may be.

However, conditions in Ethiopia have stabilized to the point that the automatic grant of voluntary departure status to unsuccessful asylum applicants can no longer be justified. Moreover, no Ethiopian today is allowed to leave Ethiopia without political clearance from the government, and increasing numbers of Ethiopians are taking advantage of automatic voluntary departure to remain and work indefinitely in the United States without having met the criteria either for immigration or for asylum.

significant

Ms. Doris Meissner
Acting Commissioner,
Immigration and Naturalization Service,
425 "I" Street, N. W.,
Washington, D. C.

The Department therefore recommends that the INS continue to grant asylum to Ethiopians in the U.S. who can demonstrate a well-founded fear of persecution, but to cease granting voluntary departure status to asylum applicants whose applications are not accepted--that is, to treat Ethiopian asylum applicants the same as those from almost all other countries in the world. For those Ethiopians who are currently in voluntary departure status, we suggest that such designations be allowed to expire on their own.

We are, of course, still prepared to offer our views with respect to any individual asylum application.

Sincerely,

William P. Clark

Attachments:
1. Palmieri/Crosland Letter dated July 18, 1980
2. Human Rights Report - Ethiopia

INTERPRETER [illegible]
v 59, no. 42
Oct. 29, 1982

Ethiopians

A new provision not previously contained in the interim rules is the amendment to 8 CFR 223.2, effective October 7, 1982, which permits the holder of an expired reentry permit to retain it if it contains valid visas, entry stamps, or documents necessary for entry into another country.

2. Change in Policy on Ethiopians Explained

In Interpreter Releases, Vol. 59. No. 26, July 9, 1982, p. 445, we noted that there had been a change of position on the part of the State Department with respect to extended voluntary departure for Ethiopians. In Vol. 59, No. 27, July 14, 1982, pp. 456-457, we published the relating INS instructions wired to its field offices on July 12, 1982. One of our readers has sent us copies of relevant correspondence between the Departments of State and Justice which help to explain the factors underlying the change in position. We reprint pertinent excerpts.

In a letter to the Attorney General dated June 29, 1982, Deputy Secretary of State Walter J. Stoessel, Jr. states:

> This letter concerns the status of Ethiopians presently in the U.S. In recent days the State Department has been monitoring the situation in Ethiopia as it might possibly affect the fate of persons forcibly returned there from the U.S. There have been conflicting statements about returnees by Ethiopian officials which persuade us that a policy of caution is advisable with respect to those who arrived prior to December 31, 1979.
>
> After careful consideration of this matter, we have come to the conclusion that Ethiopians present in the U.S. on December 31, 1979, should not be forcibly deported to Ethiopia. This date reflects the fact that by late 1979 the Government of Ethiopia had instituted a series of exit controls which made it likely that those who received passports and legally left Ethiopia after December 31, 1979 were not under suspicion by the government. Those individuals arriving after December 31, 1979, will, of course, be entitled to apply for asylum, and these cases will always be carefully reviewed. We have discussed this with Commissioner Nelson and members of your immediate staff who agree with this change in policy.
>
> I would, therefore, appreciate it if you would instruct INS to implement this policy.

On August 16, 1982, the Attorney General responded:

> Thank you for your letter of June 29, 1982, concerning the status of Ethiopian nationals presently in the United States.
>
> As you know, in view of your statements regarding the uncertain fate of Ethiopian nationals returned to Ethiopia who arrived in the United States prior to 1980, Commissioner Nelson of the Immigration and Naturalization Service has notified his Regional Commissioners that action should not be taken to enforce departure to Ethiopia of Ethiopian nationals who indicate an unwillingness to return there at present. Those Ethiopian nationals arriving after June 30, 1980 will be processed on a case-by-case basis under current procedures.

> The policy applies to Ethiopian nationals who arrived in the United States prior to June 30, 1980 rather than December 31, 1979, as stated in your letter. This change was made in accordance with your revised recommendation as conveyed by Assistant Secretary for Human Rights and Humanitarian Affairs Elliott Abrams to INS Acting Deputy Commissioner Doris Meissner in their telephone conversation of July 8, 1982.
>
> I would appreciate it if you would notify me promptly of any change in the political situation or other conditions in Ethiopia which affect your request of June 29, 1982 and the deferral of enforced departure.
>
> Please do not hesitate to contact me if I may be of further assistance.

The Deputy Secretary of State on September 20, 1982 wrote the Attorney General:

> I appreciate your letter of August 16, 1982, informing me that the Immigration and Naturalization Service will not take action to enforce departure to Ethiopia of Ethiopian nationals who indicate an unwillingness to return there at present, but that those Ethiopians who arrived after June 30, 1980 will be processed on a case-by-case basis. This procedure is based upon my letter of June 29, 1982 and a revision made by Assistant Secretary for Human Rights and Humanitarian Affairs Elliott Abrams in a telephone conversation with INS Acting Deputy Commissioner Doris Meissner on July 8, 1982.
>
> As you requested, the State Department will notify you promptly of any changes in the political situation or other conditions in Ethiopia which affect these current procedures.
>
> Thank you for your assistance.

From the foregoing, it can be inferred that it was not until June 30, 1980 that the Government of Ethiopia completed its series of exit controls which made it likely that those who received passports and legally left Ethiopia after that date were not under suspicion by the Government. For this reason, those who were in the U.S. as of June 30, 1980 and who indicate an unwillingness to return to Ethiopia at the present time under the circumstances currently prevailing there are not to be required to return there. Those who arrived in the U.S. after June 30, 1980 and who now indicate an unwillingness to return there do not automatically qualify for extended voluntary departure. If they become subject to exclusion or deportation, they are proceeded against and their requests for extended voluntary departure or for asylum are handled on a case-by-case basis.

3. Notice of Revised Edition of Form I-94 Published

In a Notice of Form Revision published in the Federal Register, Vol. 47, No. 198, October 13, 1982, p. 45109, the INS gives notice that beginning January 1, 1983 all carriers of passengers seeking admission to the U.S. and presently using the I-94 manifest procedure will be required to use only the revised edition of the Arrival-Departure Record Form I-94 (Rev. 1-1-83) N. The Form I-94 (6-1-79) currently being used will not be accepted at any U.S. entry inspection facility after December 31, 1982.

The notice is reproduced in full in Appendix II of this Release.

INTERPRETER RELEASES

An information service on immigration, naturalization and related matters

Ethiopians

Maurice A. Roberts, Editor

American Council
For Nationalities Service
20 West 40th St., New York, N.Y. 10018

Vol. 59, No. 27

July 14, 1982

RECENT SIGNIFICANT DEVELOPMENTS

1. INS Issues Instructions on Extended Voluntary Departure for Ethiopians
2. INS Publishes Interim Rule on Detention of Applicants for Admission
3. Proposed Rule on Aliens Accompanying Entertainers Published
4. Few Changes in Visa Numbers for August
5. Correction Notices

1. INS Issues Instructions on Extended Voluntary Departure for Ethiopians

In Interpreter Releases, Vol. 59, No. 26, July 9, 1982, p. 445, we noted that the State Department has reconsidered its position on conditions in Ethiopia. We stated that the State Department wrote the Department of Justice that Ethiopians here since before January 1, 1980 should be allowed to remain. On July 12, 1982, the INS Central Office wired instructions to its field offices which we quote immediately below (reference CO 243.79-P). It should be noted that the January 1, 1980 date has been changed and the instructions refer to Ethiopian nationals who were in the U.S. as of June 30, 1980.

> EFFECTIVE IMMEDIATELY, THE DEPARTMENT OF JUSTICE, UPON RECOMMENDATION OF THE DEPARTMENT OF STATE, WILL IMPLEMENT THE FOLLOWING POLICY RELATIVE TO ETHIOPIAN NATIONALS AMENABLE TO DEPORTATION OR EXCLUSION PROCEEDINGS, WHO WERE IN THE UNITED STATES AS OF JUNE 30, 1980.
>
> SERVICE ACTION SHALL NOT BE TAKEN TO ENFORCE DEPARTURE TO ETHIOPIA OF ETHIOPIAN NATIONALS WHO ARE RESIDENTS OR FORMER RESIDENTS OF ETHIOPIA AND WHO INDICATE AN UNWILLINGNESS TO RETURN TO ETHIOPIA AT THE PRESENT TIME UNDER THE CIRCUMSTANCES CURRENTLY PREVAILING THERE. EXTENSIONS OF TEMPORARY STAY MAY BE GRANTED TO THOSE NONIMMIGRANTS WHO QUALIFY FOR SUCH EXTENSIONS. IF AN APPLICATION IS DENIED, THE ETHIOPIAN NATIONAL'S DEPARTURE SHALL NOT BE ENFORCED. ETHIOPIAN NATIONALS WHO ARE LOCATED AS DEPORTABLE ALIENS WILL BE PERMITTED TO REMAIN. VOLUNTARY DEPARTURE MAY BE GRANTED IN INCREMENTS OF ONE YEAR, SUBJECT TO REVOCATION.
>
> DEPORTATION HEARINGS WILL BE POSTPONED FOR THOSE ETHIOPIAN NATIONALS FOR WHOM OSC'S HAVE BEEN ISSUED AND HEARINGS HAVE NOT COMMENCED. THOSE HEARINGS FOR ETHIOPIAN NATIONALS WHICH HAVE COMMENCED SHALL GO FORWARD: HOWEVER, DEPARTURE SHALL NOT BE ENFORCED. IN THOSE CASES WHERE A FINAL ORDER OF DEPORTATION HAS BEEN ENTERED, DEPARTURE SHALL NOT BE ENFORCED. APPLICATIONS FOR ASYLUM UNDER 8 CFR 108 SHALL BE PROCESSED ROUTINELY.

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[illegible]

Ethiopians

IMMIGRATION AND NATURALIZATION SERVICE
WASHINGTON, D. C.

UNCLASSIFIED

CO 243.79-P

12 JUL 1982

HUGH J. BRIEN, ASS'T. COMMR.
DETENTION AND DEPORTATION

633-3335

ALL REGIONS

ALL DISTRICTS
(X-FOREIGN)

ALL OIC'S
(X-FOREIGN)

EFFECTIVE IMMEDIATELY, THE DEPARTMENT OF JUSTICE, UPON RECOMMENDATION OF THE DEPARTMENT OF STATE, WILL IMPLEMENT THE FOLLOWING POLICY RELATIVE TO ETHIOPIAN NATIONALS AMENABLE TO DEPORTATION OR EXCLUSION PROCEEDINGS, WHO WERE IN THE UNITED STATES AS OF JUNE 30, 1980.

SERVICE ACTION SHALL NOT BE TAKEN TO ENFORCE DEPARTURE TO ETHIOPIA OF ETHIOPIAN NATIONALS WHO ARE RESIDENTS OR FORMER RESIDENTS OF ETHIOPIA AND WHO INDICATE AN UNWILLINGNESS TO RETURN TO ETHIOPIA AT THE PRESENT TIME UNDER THE CIRCUMSTANCES CURRENTLY PREVAILING THERE. EXTENSIONS OF TEMPORARY STAY MAY BE GRANTED TO THOSE NONIMMIGRANTS WHO QUALIFY FOR SUCH EXTENSIONS. IF AN APPLICATION IS DENIED, THE ETHIOPIAN NATIONAL'S DEPARTURE SHALL NOT BE ENFORCED. ETHIOPIAN NATIONALS WHO ARE LOCATED AS DEPORTABLE ALIENS WILL BE PERMITTED TO REMAIN. VOLUNTARY DEPARTURE MAY BE GRANTED IN INCREMENTS OF ONE YEAR, SUBJECT TO REVOCATION.

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Nicaraguan

INTERPRETER RELEASES
An Information Service on Immigration, Naturalization and Related Matters

American Council for Nationalities Service
20 West 40th Street, New York, N.Y. 10018

BULLETIN

Maurice A. Roberts
Editor

July 5, 1979

Enforced Departure of Reluctant Nicaraguans Stayed to December 31, 1979

In a wire to all field offices dated July 3, 1979 (file CO 243.109-P), the INS has issued instructions that the enforced departure of Nicaraguans in the U.S. on June 27, 1979 and who indicate an unwillingness to return to Nicaragua shall be stayed until December 31, 1979. An exception is made for those who were residents of a third country or have been convicted of criminal acts in the U.S. Work permission is authorized for those who establish appropriate need. The text of the instructions follows:

> EFFECTIVE IMMEDIATELY, THE FOLLOWING POLICY SHALL BE IMPLEMENTED RELATIVE TO NICARAGUAN NATIONALS AMENABLE TO DEPORTATION OR EXCLUSION PROCEEDINGS, WHO ARE IN THE UNITED STATES AS OF JUNE 27, 1979. SERVICE ACTION SHALL NOT BE TAKEN TO ENFORCE DEPARTURE TO NICARAGUA, PRIOR TO DECEMBER 31, 1979, OF NICARAGUAN NATIONALS WHO ARE RESIDENTS OR FORMER RESIDENTS OF NICARAGUA AND WHO INDICATE AN UNWILLINGNESS TO RETURN TO THAT COUNTRY AT THE PRESENT TIME UNDER THE UNSTABLE CONDITIONS CURRENTLY EXISTING THERE. EXTENSIONS OF TEMPORARY STAY MAY BE GRANTED TO THOSE NON-IMMIGRANTS WHO QUALIFY FOR SUCH EXTENSIONS. IF AN APPLICATION IS DENIED, THE NICARAGUAN NATIONAL'S DEPARTURE SHALL NOT BE ENFORCED PRIOR TO DECEMBER 31, 1979. NICARAGUAN NATIONALS WHO ARE LOCATED AS DEPORTABLE ALIENS WILL BE GRANTED VOLUNTARY DEPARTURE UNTIL DECEMBER 31, 1979. DEPORTATION HEARINGS WILL BE POSTPONED UNTIL AFTER DECEMBER 31, 1979. FOR THOSE NICARAGUANS FOR WHOM OSC'S HAVE BEEN ISSUED AND HEARINGS HAVE NOT COMMENCED. THOSE HEARINGS FOR NICARAGUAN NATIONALS WHICH HAVE COMMENCED SHALL GO FORWARD; HOWEVER, DEPARTURE SHALL NOT BE ENFORCED PRIOR TO DECEMBER 31, 1979. IN THOSE CASES WHERE A FINAL ORDER OF DEPORTATION HAS BEEN ENTERED, DEPARTURE SHALL NOT BE ENFORCED PRIOR TO DECEMBER 31, 1979.
>
> THE FOREGOING PROVISIONS SHALL NOT APPLY TO THOSE NICARAGUAN NATIONALS WHO HAVE NOT EVIDENCED AN UNWILLINGNESS TO RETURN TO NICARAGUA; TO NICARAGUANS WHO WERE RESIDENTS OF A THIRD COUNTRY; OR HAVE BEEN CONVICTED OF CRIMINAL ACTS IN THE UNITED STATES. IN SUCH CASES, WHERE

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Nicaraguan

Maurice A. Roberts, Editor

American Council
For Nationalities Service
20 West 40th St., New York, N.Y. 10018

Vol. 56, No. 36

September 12, 1979

RECENT SIGNIFICANT DEVELOPMENTS

Enforced Departure of Reluctant Nicaraguans Stayed Regardless of Arrival Date
Court Restores Haitian Refugees' Employment Authorization
Proposed Rule Would Require H-1 Nurses to Pass CGFNS Exam
Extensions Authorized for Out-of-Status H-1 Nurses
INS Designates Pilots as Immigration Officers
Regulations Amended on Translations and Fees from Abroad
Details on New Immigration Seminars

Enforced Departure of Reluctant Nicaraguans Stayed Regardless of Arrival Date

In a wire to all field offices dated August 29, 1979, the INS has clarified its prior instructions dated July 3, 1979 concerning the enforced departure of Nicaraguan nationals. The July 3 instructions, with certain exceptions, stayed until December 31, 1979 the enforced departure of Nicaraguans unwilling to return to Nicaragua "who are in the United States as of June 27, 1979." (Underscoring in original)* This immediately raised the question as to what should be done with respect to such Nicaraguans who arrived here after June 27, 1979. That question is now answered in the wire of August 29, 1979, which makes the stay applicable to reluctant Nicaraguans irrespective of the date of arrival in the United States. The text of the August 29 wire is as follows:

> BEJEK CO 243.109-P OF JULY 3, 1979 RE DEFERRED DEPARTURE FOR NICARAGUAN NATIONALS. THE DEPARTMENT OF STATE HAS RECOMMENDED AGAINST THE FORCIBLE RETURN TO NICARAGUA OF ANY NICARAGUAN NATIONALS FOR THE REMAINDER OF THE CALENDAR YEAR, IRRESPECTIVE OF THE DATE OF ARRIVAL IN THE UNITED STATES, DUE TO THE UNSETTLED CONDITIONS IN NICARAGUA. ACCORDINGLY, THE INSTRUCTIONS IN CO 243.109-P OF 7/3/79 WILL APPLY TO ALL NICARAGUAN NATIONALS IN THE UNITED STATES RATHER THAN ONLY THOSE HERE AS OF JUNE 27, 1979. HOWEVER, AS STATED IN CO 243.109-P OF 7/3/79 THE POLICY AGAINST FORCIBLE RETURN SHALL NOT APPLY TO THOSE NICARAGUAN NATIONALS WHO HAVE NOT EVIDENCED AN UNWILLINGNESS TO RETURN TO NICARAGUA; TO NICARAGUANS WHO WERE RESIDENTS OF A THIRD COUNTRY, OR HAVE BEEN CONVICTED OF CRIMINAL ACTS IN THE UNITED STATES. AS PREVIOUSLY STATED, EMPLOYMENT AUTHORIZATION SHOULD BE CONDITIONED SOLELY UPON ESTABLISHMENT OF APPROPRIATE NEED BY INDIVIDUAL ALIENS OF THIS CLASS.

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* For the text of the July 3, 1979 instructions, see Interpreter Releases Bulletin dated July 5, 1979, pp. 325a-325b.

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QUESTIONS SUBMITTED TO MICHAEL MYERS BY SENATOR ALAN SIMPSON

Question. In your written statement you speak of killing parents in front of children and of decapitated, multilated bodies on city streets, you're referring to the situation in El Salvador 2 or 3 years ago. Don't you agree that the situation is much different in that country today? That the type of death squad violence you described is much reduced today and continues to decline?

Answer. I believe that our statement makes clear the fact that we recognize the decrease in death squad killings and disappearances, and certainly applaud this development. However, the tactics being used today to win the war in El Salvador have been called "draining the sea"—attacking and clearing out whole departments of El Salvador of any civilians who might still be left there. Areas of El Salvador have now been declared "free fire zones." Furthermore, guerrillas have opened up activities in parts of the country (such as the West) heretofore relatively untouched by the war. These recent developments have caused an increase in the displacement of civilians. The U.S. Embassy in El Salvador has increased its estimates of the number of internally displaced persons from 500,000 to 525,000 in recent months, a drastic increase by any account.

In other words, the conditions that exist right now in El Salvador are causing increased displacement and high risk to the general population. This is why S. 377, a temporary stay of deportation, or extended voluntary departure (EVD) for Salvadorans remains so important.

Question. Given the history of a traditional flow of undocumented Salvadorans to the United States, wouldn't you agree that the granting of suspension of deportation would very likely increase that flow?

Answer. S. 377 is specifically designed not to increase migration by limiting the class of Salvadorans covered by the bill only to those in the U.S. as of enactment. Furthermore, there is no historical evidence to suggest that previous grants of EVD increased the migration of the benefitting nationalities.

Question. In your testimony, you list Lebanon as a country receiving EVD, and in an appendix to your testimony, you reprint the INS Directive, which reads: "There is still no blanket policy to grant extended voluntary departure to nationals of Lebanon in the U.S. who have overstayed. However, the civil strife in that country continues and this is to reaffirm that officers should, on a case-by-case basis, view sympathetically requests for EVD where such requests are based upon compelling humanitarian need." While "civil strife" is mentioned, is not the policy recommended here—case-by-case review, sole discretion by the INS officer—radically different from a blanket, nonreviewable suspension of deportation?

Answer. The Lebanese case is exceptional insofar as INS instructions called for considerations on a case-by-case basis. The fundamental basis for the EVD is stated in these instructions as "civil strife," consonant with other grants of EVD.

[The following information was subsequently submitted for the record:]

Subsequent to testimony on April 22, the State Department confirmed the number of Salvadorans who voluntarily returned from Honduras, as reported by the United Nations High Commissioner for Refugees. We contacted the Embassy in Tegucigalpa which referred to UNHCR's report of 2,257 in 1984, 502 in 1983, and 24 in 1982. This figure is only for those under UNHCR protection, and does not include those who may have returned on their own.

In clarification of TACA flights between the United States and El Salvador, we find that we understated the figure in our testimony. There are 23 flights each week, not 13 flights. Each flight carries an estimated 125 passengers, using Boeing 727/737 aircraft, for an estimated 2875 passengers each week, about 11,500 passengers each month. TACA estimates that about 800 passengers disembark in Belize each month.

MICHAEL MYERS RESPONSE TO SENATOR DECONCINI'S QUESTIONS

Question. 1. What are other countries, such as Canada, doing to protect Salvadorans? Are you familiar with the legal basis for these decisions—are they being done administratively or statutorily?

Answer. At this time, the U.S. is the only country in North America (in fact in the West) which has a policy of deporting Salvadorans to El Salvador. While military activities in the countries in Central America may have the result of forcing refugees across borders, these forced migrations of this sort are not explicitly a matter of policy.

Some governments—notably Canada—have accepted as refugees Salvadorans from Central America and even from the U.S. Canadian officials have been known to have had to enter the U.S. INS detention facilities to process Salvadorans into Canada. Last year, we understand, Canada admitted some 400 Salvadoran refugees from the U.S.

These admissions are conducted under Canada's refugee program, which is established in statute. While the program is statutorily based, decisions regarding the numbers of refugees to be admitted each year and from where are determined administratively. Canada anticipates the admission of 3,000 refugees from Central America (primarily Salvadorans) in 1985 under Canadian government sponsorship, up from 2,500 in 1984.

Canada's program allows the admission over and above the government's ceiling of refugees for whom their exists sufficient private sponsorship in Canada. Churches in Canada have frequently utilized this segment of the Canadian program to obtain the admission of extra Salvadoran refugees who might not otherwise be accomodated by the regular program. This aspect of the program has frequently been used, for example, for Salvadorans denied refuge in the U.S.

In addition, the Canadian government has decided administratively not to deport Salvadorans in Canada illegally. This action is analogous to EVD or a suspension of deportation.

The Government of Mexico has also provided status to Salvadorans in the Federal District. While the status provided is not always asylum (they are often given student visas or work permits), the status is conferred upon a recommendation by the UNHCR that the individual should be considered a refugee.

Australia also admits Salvadorans as refugees from Central America.

Question. Recently the State Department has been working with ICM to assist in the safe return of Salvadors to El Salvador. Do you know how this program has worked? What effect should this arrangement have on whether or not S. 377 should become law?

Answer. The Intergovernmental Committee for Migration's reception service at the airport in San Salvador began in December 1984. The service is funded under contract with the U.S. Department of State. It consists of meeting deportees at the airport and assisting them with ongoing transportation needs and, if needed, overnight shelter. The program further provides the important service of providing deportees with temporary identification documents while they seek to obtain permanent ID or "cedullas." The deportees are provided post cards to mail to ICM to report on their progress.

While the program is no doubt an important service, it in no way addresses the basis for S. 377. Reception at the airport and monitoring through the mail does not alter the condition of violence that exists in El Salvador, which has claimed the lives of as many as 50,000 civilians in the past five years.

Question. Critics of S. 377 say that those who are supporting a suspension of deportation for Salvadorans are merely critics of the Reagan administration trying to make political points and do not really care about the individual Salvadorans involved. What do you think motivates the Church people that you represent who are involved in this issue?

Answer. A number of our member denominations have recognized sanctuary as an appropriate ministry for their congregations. Their motive for doing so is clearly reflected in the statement of the Christian Church (Disciples of Christ) on the subject, namely, humanitarian concern for the protection of refugees. This statement notes the following (from "Sanctuary for Central Americans: A Position Paper" by the Christian Church (Disciples)):

Love for one's neighbor should move the faith community to do what is needed to prevent refugees from being returned to the suffering they have experienced in their homelands. While legal alternatives to help refugees have been and are being tried, people continue to be returned to their homelands where some are persecuted and even killed. Sanctuary is a way of expressing compassion to these people in need. It is a symbol of resistance to injustice, which dramatizes the need for a new world economic order that more justly distributes the world's wealth and the just claim of refugees for protection from persecution. It is an act that refuses to leave compassion to the limits of the law.

Civil disobedience is most often understood to be individualized resistance to injustice, but sanctuary is a different kind of civil disobedience that is intended not only to resist injustice but also to *do* justice. Only communities can choose to *do* justice, and by joining with other faith communities in providing sanctuary, a congregation transcends the justice or injustice of any nation to do God's justice.

The congregation that provides sanctuary symbolized the universality of the church beyond the boundaries of any nation or state. Such a congregation stands in solidarity not only with the people of Central America but also with the Church there. The willingness of the Church in Central America is to stand with the poor, the tortured, and the oppressed is a very powerful example for the Church in the U.S.A.

Those involved in sanctuary have views on the subject of policy toward Central America, just as most American have views on the subject. It is no secret that some in the so-called "sanctuary movement" have suggested their views on the larger political questions to be their motives for sanctuary. I think it is wrong to use refugees—a humanitarian issue—for political purposes.

The point of S. 377 is protection, not politics. Those who would be protected by S. 377 are victims of *both* the right *and* left in El Salvador, not just any one side.

Question. Commissioner Nelson testified that the vast sums being spent by congregations to maintain only a few people in "sanctuary" could support many times that number in refugee camps or townships. How would you respond to this statement?

Answer. Those U.S. congregations assisting Salvadoran refugees here are responding to needs at their doorsteps. While there are assistance needs for refugees in Central America, such needs exist here as well. In the past couple of years, our member denominations have contributed through CWS over $1 million to fund 26 projects across the country for the purpose of assisting those seeking haven here who are in need of legal and social services.

It should be noted that vast sums of money are already being spent on refugee and displaced persons camps in Central America, but this cannot be the only answer to the problem. We *must* realize that we have become a country of first asylum and take responsibility for the people in this country who have fled the violence in their homelands. We would be taking a drastic step backward if we become seen as a country which encourages generous first asylum policies in the Third World, but when confronted with the same situation at home, we export our refugees problems back to the Third World. We must look at what affect our policy is having on other countries of first asylum.

The General Accounting Office in a study of Central American refugees last July found that the options for Salvadoran refugees in Central America were getting smaller and smaller, meaning ultimately that more Salvadorans would come to the U.S. The closed camps in Honduras are said to be a deterrent to new arrivals. Many Salvadorans who had taken shelter in Nicaragua have left due to the conflict there. Also due to the border conflict between Honduras and Nicaragua, Salvadorans "find it virtually impossible to reach Costa Rica by land . . ." (General Accounting Office, "Central American Refugees: Regional Conditions and Prospects and Potential Impact on the United States," July 20, 1984, p. 31)

Obviously other solutions must be explored, the most obvious being temporarily taking responsibility to provide shelter for these refugees. This is what the sanctuary movement and others are doing in many ways.

Question. The Administration says that asylum seekers in the United States should have stopped in Guatemala or Mexico and the fact that they traveled through those countries before they arrived in the United States proves they are economic migrants not refugees. Is there any provision of law or treaty that you are aware of that strips an individual of refugee status because they he or she has passed through another country? Is there anything inconsistent with being a refugee in fear of persecution in his own country *and* wanting to better yourself economically?

Answer. The Refugee Act of 1980 allows for the admission of refugees from overseas who, among other criteria, have "not firmly resettled in any foreign country." (INA Sec. 207(c)(1)) Regulations on the subject elaborate:

> An alien is considered 'firmly resettled' if he was offered resident status, citizenship, or some other type of permanent resettlement by another nation. . . . In making this determination, the officer shall consider, in light of the conditions under which other residents of the country live, the type of housing, whether permanent or temporary, made available to the refugee, the types and extent of employment available to the refugee, and the extent to which the refugee received permission to hold property and to enjoy other rights and privileges . . . available to others resident in the country. (8 CFR 208.14)

With the exception of a few cases granted residence in the Federal District of Mexico, virtually all Salvadorans scattered about Central America could not be considered "firmly resettled" under the above definition. With Salvadorans in Honduras held in camps, with Salvadorans in Mexico and Guatemala living in camps or surviving in the underground economy as illegal aliens, they as a general rule have not been firmly resettled.

Therefore, the fact that Salvadorans have not found in Central America and Mexico the requisite conditions for firm resettlement classified in the *Code of Federal Regulations*, and have thus opted to come to the U.S., does not classify the migration as economic.

Obviously, refugees flee their countries with mixed motives, which may include the desire for self-betterment. What is relevant for asylum purposes, however, is whether the individual, among the mix of possible motives, has a well-founded fear of persecution upon return.

Senator SIMPSON. Thank you, Mr. Myers. I appreciate your remarks.

Wade, it is nice to see you, sir. I always enjoy my visits with you, and we have had some spirited ones in last years, have we not? I assume that you are representing the Acting Director, and ably so. So if you would proceed, I would appreciate it.

Mr. HENDERSON. Senator Simpson, thank you very much and Senator DeConcini as well.

Permit me to introduce Carol Wolchok, who is the director of the local ACLU Political Asylum Project of the National Capital area who will be available for questions. And, if I could, let me ask that the testimony and the appendices which we have submitted for the hearing today be included in the record.

Senator SIMPSON. Without objection.

[Statement follows:]

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AMERICAN CIVIL LIBERTIES UNION of the NATIONAL CAPITAL AREA

ON BEHALF OF

THE AMERICAN CIVIL LIBERTIES UNION

ON

DISPLACED SALVADORAN REFUGEES

S. 377

BEFORE

UNITED STATES SENATE JUDICIARY COMMITTEE

SUBCOMMITTEE ON IMMIGRATION

April 22, 1985

Mr. Chairman and Members of the Subcommittee:

We appreciate the opportunity to appear before this Subcommittee to present the views of the American Civil Liberties Union concerning the deportation of Salvadoran nationals to El Salvador, the conditions that these deportees encounter when returned, and S.377, which calls for the temporary suspension of deportation of Salvadoran nationals from the United States. The American Civil Liberties Union is a nationwide, non-partisan organization of more than 275,000 members devoted to protecting the Bill of Rights.

America's immigration and refugee policies have become the subjects of passionate debate in recent years. However, few issues within the immigration debate have generated more concern and compassion than the growing number of Salvadoran nationals here in the United States. Many persons believe that because of the human rights situation in El Salvador, displaced Salvadoran nationals are bona fide refugees in need of governmental protection. But many others including the United States government regard these same Salvadorans as merely undocumented workers in search of employment here in the United States.

The ACLU believes that it is urgent to seek to develop a national consensus on legislation which will in fact deal with the problem of millions of undocumented workers, and which does so in a way which is consistent with our national commitment to equal protection, non-discrimination, and respect for human and civil rights. But, we also believe that the importance of lawful options for refugee protection and a firm commitment to the protection of internationally recognized human rights must not be diminished by the desire for immigration reform.

The ACLU has a number concerns about the undocumented Salvadoran population in the United States: (1) We are deeply troubled by the widespread violence against the civilian population of El Salvador and remain concerned about the consequence for the right to life of persons who might be deported there; (2) We are strongly committed to the rule of law, and are concerned by the discriminatory application of legal standards, particularly in the refugee context, on the basis of extraneous, political or non-humanitarian considerations; (3) We are aware that Salvadorans in the United States constitute a sizeable and growing "underground" population. This condition presents a significant immigration dilemma which is best served by a meaningful response to the temporary need for refugee protection; and (4) We are troubled that many Americans, acting from conscience, are engaging in acts which are construed by the government as violations of the criminal law.

S.377 is a modest device for accomplishing a limited but essential humanitarian purpose. The American Civil Liberties Union urges that the bill be promptly reported with a favorable recommendation.

Human Rights and the Fates of the Returned

Human rights abuses remain a central issue in El Salvador. By all accounts, El Salvador is wracked by a civil war characterized by a startling degree of danger and brutality. The principal victims of this civil war are innocent civilians. Reliable estimates of the number of civilians killed range from 40,000 to 50,000 persons since 1979.[1] The significance of this figure can only be appreciated if one recalls that the total population of El Salvador numbers fewer than 5 million, and that the geographical size of El Salvador is roughly equivalent to that of the state of Maryland.

Documentation of the severity of the human rights situation in El Salvador is thorough, credible and extensive. Amnesty International, the widely respected human rights monitoring organization, has documented the atmosphere of random violence which characterizes life in El Salvador[2]:

> "Amnesty International remained gravely concerned about the continued involvement of all branches of the security and military forces in a systematic and widespread program of torture, individual and mass extrajudicial execution of men, women and children from all sectors of Salvadoran society. Paramilitary civilian defense squads which operated under military supervision as well as so-called "death squads" were also consistently named as having been responsible for such abuses.

> . . . Victims of human rights violations were killed outright or were abducted and held incommunicado in police stations, army barracks or secret detention centers, where they were frequently subjected to torture and ill-treatment. While some were eventually released or were transferred to official prisons, thousands have "disappeared" over the past five years. Despite repeated requests by Amnesty International the government consistently failed to initiate any inquiries to identify those responsible for such abuses and to bring them to justice.
>
> . . . Such human rights abuses occurred in the context of a continuing civil conflict and Amnesty International received allegations that opposition forces were also carrying out individual execution-style killings.

It is fair to note that there has been a decline in "some kinds of human rights abuses -- notably death squad killings and disappearances ... in large part because of U.S. pressure. On the other hand, the indiscriminate killing of civilians in guerrilla-controlled zones of El Salvador continued."[3] "Shielded from the ordinary criminal judicial process, the military continues to act violently, brutally, and with impunity," according to the Lawyers Committee for International Human Rights.[4]

The indiscriminate attacks by the armed forces on the civilian population were the focus of a recent Americas Watch report.[5]

> The Salvadoran armed forces are draining the sea in order to deny the fish sustenance. The sea is the civilian population in guerrilla-controlled zones; the fish are the guerrillas.
>
> This may be an effective strategy for winning the war. It is, however, a strategy that involves the use of terror tactics -- bombings, strafings, shellings, and, occasionally, massacres of civilians. Largely as a consequence, approximately one quarter of all Salvadorans have fled their homes. Some have left the country; others are displaced within their own country.
>
> The advent of president Duarte has not altered the use of these tactics. As best we can determine, President Duarte lacks the authority to modify their use by the armed forces.

Furthermore, the Department of State *Country Reports on Human Rights Practices for 1984* also demonstrates that the Salvadoran human rights situation remains serious:

> Human rights conditions in El Salvador are strongly affected by the ongoing civil strife. The achievement of a stable public order sufficient to protect individual rights has been disrupted by guerrilla and military operations, partisan hatreds, acts of revenge, fear, and a prevailing uncertainty characterized by violence. This situation contributes to, and is complicated by, the ineffectiveoperation of the judicial system, caused in part by corruption and intimidation. At page 512-513.

Last week, The Washington Post[6] reported the execution-style death of twenty civilians, including several children, in what is believed to be a stepped-up campaign of terror by the opposition. It is obvious beyond dispute that the extent of the violence is severe, and that it is both random and specifically directed against the civilian population.

The Reagan administration has a policy of deporting Salvadorans to El Salvador unless they can meet the stringent standards of proof necessary to obtain political asylum in the United States. Fewer than 1,000 Salvadorans have been granted asylum since 1980 while approximately 25,000 were sent back to El Salvador during that same time period. Many more thousands have had their applications for asylum denied and are likely to soon receive final deportation orders.

The U.S. Immigration and Naturalization Service and Department of State have been criticized for unfairness in the adjudication of political asylum claims by Salvadorans. One federal court judge described INS practices of detaining, processing and removing Salvadoran nationals as "coercive", "carried out by the INS with little or no regard for the procedural or substantive rights of aliens under United States immigration law." [7] Even an internal INS report admitted that there is a double standard: "different levels of proof are required of different asylum applicants. In other words, certain nationalities appear to benefit from presumptive status while others do not. For example, for an El Salvadoran national to receive a favorable advisory opinion, he or she must have 'a classic textbook case'".[8]

The Administration, however, defends the criterion for asylum as necessarily strict and states they are in compliance with international standards established by the UN Protocol Relating to the Status of Refugees. We disagree. While the definition of "refugee" for the purpose of granting permanent resettlement derives from the Refugee Protocol, the standards of proof applied by the United States are more stringent than those of other nations which utilizing this same definition.

An article published in the Brooklyn Journal of International Law[9] studied the implementation of the Refugee Protocol in several nations in Western Europe, Canada and the United States. The author found that the "United States is less in conformity with the Protocol than that of any of the States reviewed" and that the standard of proof was "by far the strictest of those surveyed and fundamentally inconsistent with the Protocol definition of refugee both in formulation and application."

In enacting the Refugee Act of 1980, the Congress did not address the conditions nor standards to be applied for determining when in emergency situations foreign nationals in the United States are entitled to special relief of "extended voluntary departure" (EVD). However, it is clear that Refugee Act's enactment was not intended to end and has not curtailed the a grant of EVD when circumstances demonstrate the need for such temporary protection.

These standards and definitional matters may appear abstract, but they have concrete impacts on lives of persons who have fled a civil war and have legitimate fears of being unwitting victims of military hostilities -- a distinction from the very specific fear of political persecution which they must establish in order to obtain political asylum.

The Administration argues that the Salvadorans who do not qualify individually for asylum under the extremely strict standards of proof have nothing to be afraid of and may safely be returned to El Salvador. The Administration supports this conclusion on the premise that no evidence exists that persons have been persecuted in El Salvador because they were deported from the United States. This argument is disingenuous. There is substantial evidence that persons have been persecuted in El Salvador after their forced return from the United States.

Despite the difficulties of acquiring information about the fates of deportees, there is a significant quantity of proof that returned persons have been victims of persecution in El Salvador. Five cases of death or disappearance were established from public record sources and are documented in Appendix III of the ACLU Public Policy Report, Salvadorans in the United States: the Case for Extended Voluntary Departure (Attachment I). That documentation has also been presented to the Assistant Secretary of State for Human Rights and Humanitarian Affairs, Elliott Abrams.

More than a hundred other cases were identified in a study by the Political Asylum Project of the American Civil Liberties Union of the National Capital Area (Attachment II), and were presented to the Department of State and Immigration and Refugee Subcommittees of the Judiciary Committee in both houses of Congress a year ago.

The ACLU study was conducted with limited resources and limited information by two people in a basement on Capitol Hill. The ACLU filed a Freedom of Information Act request for lists of persons deported by the INS. We ultimately received, after being denied the information and litigating the request, a list of some 8500 persons deported to El Salvador from the United States between March 1981 and March 1983. In some cases we received the individual's address in El Salvador; in the overwhelming majority of cases we received a name with no other biographic or identifying information. In any case, this list was incomplete, representing less than a third of the persons who have been forcibly returned to El Salvador since 1980.

We then looked at records documenting human rights abuse in El Salvador already assembled in the ACLU office. These records consisted of some 15,000 names of people who were victims of political persecution. These 15,000 victims are but a mere fraction of the total number of persons persecuted for political reasons since 1979. Moreover, our records do not include the names of tens of thousands of Salvadorans who were victims of other types of violence related to the armed conflict, such as death or injury caused by a bomb or stray bullet. We also do not have the names of the nearly 700,000 persons who have suffered other types of harm such as forced displacement from their homes or psychological trauma.

We checked the names of those deported against the records of Salvadoran human rights victims in our files. We were alarmed by our findings. We identified 112 likely cases of persecution, including 52 political murders, 47 disappearances, and 13 unlawful political arrests. As to the 8,400 other deportees whose names we obtained, we have no information regarding their welfare or fates: they may be dead or alive, injured, displaced from their homes, or refugees in other countries. The fact that our office files do not contain records of persecution to them cannot be interpreted to mean they have suffered no harm.

The Department of State was apparently impressed by our report, for the U.S. embassy in San Salvador took twenty-six names from our list and sent them for corroboration to Socorro Juridico and Tutela Legal, two Salvadoran human rights monitoring agencies, in July, 1984. That same month, Socorro Juridico and Tutela Legal replied to the embassy that it was not the function of their offices to supply that type of information, but they did promptly confirm the human rights abuses in seven cases and forwarded the documentation to the embassy.

The documentation submitted to the embassy included confirmation of political murders, disappearances, and political arrests. In one case, there were eye-witness accounts of the abduction of a 16 year old deportee with his mother and five younger brothers and sisters by the U.S. trained Atlacatl Battalion. None of them have ever reappeared. Another deportee identified by our study was reportedly abducted by heavily armed persons in civilian clothes while bathing in a river. Two other deportees were abducted from their homes at night, one by heavily armed persons in civilian dress and the other by soldiers with G-3 rifles.

In another instance, two men, deported together in 1982, were picked up at a bus terminal by heavily armed men in civilian clothes. According to witnesses, they were taken away in a white pick-up characteristic of the death squad. Five days later their bodies were found with that of another man on a road near Santa Tecla. In 1983, a professor at the University of El Salvador was captured by other armed men as he walked home after having conducted his classes. He is still missing and presumed dead.

We categorically reject the Administration's assertion that the ACLU study failed to turn up the evidence we were seeking about the danger faced by deportees. Our aim was not to do a definitive study. With very limited resources and access to information, we set out only to raise sufficient questions and doubts to justify suspending deportations until a definitive study was done. We believe that we have done that.

The cases which the study identified are just the tip of the iceberg. The ACLU Political Asylum Project continues to receive documentation from numerous sources regarding persecution to others who were deported. We represent a young Salvadoran man, the father of two U.S. citizen children, who was returned to El Salvador by the INS. Immediately upon his arrival, he was abducted by National Police from the bus stop at the national airport. They took his passport and other identification and took him to a secret location. He was kicked, repeatedly interrogated, and wrongly accused of being a subversive. After three weeks, he managed to escape. He has returned to the United States and applied for asylum. The State Department, however, has recommended against asylum claiming he is merely trying to evade compulsory military service. This is not true: he had volunteered for and successfully completed two years of military service prior to his first entry to the United States.

We also know of a young university student who fled to the United States after the brutal murder of two fellow students. He was deported to El Salvador in 1984 and he too was arrested at the airport upon his arrival. He was taken away by security officers who held him and beat him for two weeks before dumping him in the city garbage dump. Several months ago, he was able to escape back to the United States, but he was caught and detained by INS the same day he entered the country. He is now in Canada.

The Administration argues these individuals should have stayed in Mexico, that somehow the legitimacy of their needs for protection are diminished because they crossed the Rio Grande.

This test affords no fair assessment of a claim for protection. First, many persons of other nationalities who ultimately receive asylum have also passed through other "friendly" nations on their way to the U.S.: their claims to asylum were not viewed as prejudiced because they did not seek asylum in those nations first. Second, Mexico does not subscribe to the U.N. Protocol and has no procedures by which a Salvadoran can apply for asylum. As noted in the Department of State Country Reports on Human Rights Practices for 1984, Mexico does not "regard them as refugees." Although more than 100,00 Salvadorans are illegally present there, Mexico is not the "safe haven" the Administration presents it to be.

The U.S. embassy conducted its own "survey" of a group of 482 deportees last year, a study which Assistant Secretary of State Abrams calls "flawed" and "unscientific".[10] Only 120 persons were ever contacted directly by embassy personnel. In fact, the welfare of 260 deportees was not established, including that of 78 persons who returned to areas considered too dangerous to be visited by embassy investigators. Moreover, two deportees in the study were dead within six months of their return. One was deliberately killed by guerrillas and the other's death could not be investigated because "the residence of this individual is in a conflictive area and it would be unsafe for an investigator to travel there".[11]

Rather than expressing concern that so many dead and disappeared individuals were denied refuge in the United States, the Administration argues that there is no evidence that these Salvadorans have been persecuted upon their return because they had been deported from the United States. This is a red herring. The issue is not whether these persons were targeted or persecuted because they had been deported. The issues are whether present conditions in El Salvador make such harm possible, and whether it unconscionable to send Salvadorans back even if the deportee faces no greater dangers than those faced by persons who never left El Salvador.

The significance of these cases and the lesson we should learn from them is that the political asylum process is not adequately protecting persons who need protection and more lenient standards or broader protections are necessary if we are to prevent further tragedy.

The Motivation for Migration

The original motive for immigration to the U.S. is not relevant to the standards for granting extended voluntary departure. Extended voluntary departure has in the past provided humanitarian relief to precisely the type of population represented by the Salvadorans. That is to say, that it has been granted to an endangered nationality, regardless of the original reason for an individual's entry into the U.S.

Indeed, under the clear standards articulated for extended voluntary departure, the motive for migration can only be relevant if it is assumed that a person who originally entered the U.S. in search of economic improvement therefore now has nothing to fear upon repatriation.

Extended voluntary departure has been granted in the past when there is "widespread fighting, destruction and breakdown of public services and order" in the alien's country of origin.[12] The leading treatise on Immigration Law formulates the standard as involving ". . . countries undergoing active hostilities or other dangerous conditions."[13]

The Departments of State and Justice have in the past examined the current social conditions in the applicant's native country and have granted EVD if the applicant has reason to be concerned for his safety as a result of conditions which exist in that country. Such findings have been made at various times for nationals of various countries [14] and are clearly appropriate for Salvadorans.

However, the Administration continues to wrongly link extended voluntary departure for Salvadorans to the question of whether they meet the test for refugee status. This is done with the assertion that Salvadorans are economic migrants deserving no formal recognition or protection.

Certainly, Salvadoran migration to the United States did not begin with the outbreak of overt civil war in El Salvador. However, the actual pattern of Salvadoran migration in prior years is difficult to assess because of a lack of reliable, nationality specific data for Salvadorans before 1976. It is generally accepted that between 300,000 to 500,000 Salvadorans now reside in the United States. But a special study by the U.S. Bureau of the Census estimated that in 1980 only 94,000 Salvadorans lived here, 51,150 of whom were thought to be undocumented.[15]

Research being completed at the Massachusetts Institute of Technology which examines Salvadoran migration the United States offers a particularly constructive contribution to the political debate. The work of doctoral candidate, William Stanley (Attachment III), appears to be the first empirical analysis of the motivation of Salvadoran migrants on the relationship between political violence in El Salvador and on migration to the United States. This research finds "strong empirical evidence, based on the actual behavior of Salvadorans, that fear of political violence is the predominant motive behind the decisions of Salvadorans to migrate to the U.S. since 1979." At minimum, this research adds to the already compelling case in support of temporary protection for Salvadoran refugees.

Immigration Policy, and Refugee Protection

One and a quarter million Salvadorans, a quarter of that country's total population, have been compelled to flee their homes since 1979. Hundreds of thousands of Salvadorans are displaced refugees throughout Central America. Approximately 300,000 - 500,000 have entered the U.S. over the last several years, the majority of these persons having done so without inspection. The figures on the disposition of the asylum applications of Salvadorans suggest that most will not quality for relief from deportation on a case by case basis (see Tables I and II). Nevertheless, the extreme dangers and hardships faced by these people if they are returned to El Salvador, induce in them an intense fear of deportation. They manifest, therefore, the same characteristics of docility, exploitability and unwillingness to cooperate with legal authority as the undocumented population in general.

Without a particularly significant increase in the enforcement activity of the INS against Salvadoran nationals, the vast majority of this population will remain in the United States. The return to El Salvador of those who are caught in the INS enforcement has not and will not significantly reduce the size of this population. Over the long-term, this unchecked migration of Salvadoran nationals will produce precisely the "underclass" which U.S. immigration policy seeks to avoid.

The DeConcini bill, S.377, is necessitated by the continuing refusal of the Executive branch to acknowledge that compelling humanitarian factors and sound immigration policy favor a temporary suspension of the deportation of Salvadoran nationals. Congress and the President previously approved a similar approach in the current State Department Authorization Legislation, Public Law 98-164. That expression of support for an extended voluntary departure was never enforced. Congress must act by passing the bill to: 1) avoid _refoulement_, preserve legal obligations, and uphold our national commitment to the sanctity of human life; and 2) forge the political consensus in support of government action on the Salvadoran refugee dilemma in a way that sustains rather than undercuts support for our immigration policies.

The approach to political consensus through credible, independent fact finding is the backbone behind the DeConcini concept. The General Accounting Office would be used to assess the fates of deportees returned to El Salvador from the United States; the conditions of displaced Salvadorans in Central America; and the treatment of Salvadorans in the United States by our government in comparison to other foreign nationals during periods when these individuals have been provided administrative grants of extended voluntary departure under the immigration laws.

By shifting the public debate over the status of undocumented Salvadorans in the United States into a structured context like S. 377, Congress will accomplish several laudable objectives: (1) humanitarian concern for Salvadorans that is now vaguely defined, poorly understood and difficult to establish without government assistance are transformed into questions of verifiable fact; (2) the rule of law is enhanced because of a willingness by our government to address meaningfully the Salvadoran protection issue thereby reducing the incentive for activity which may be viewed as illegal; and (3) immigration policy is facilitated through the identification and registration of now undocumented Salvadorans, thereby preserving the possibility of their orderly return when the situation permits.

In addition, S.377 mandates congressional review of the GAO findings to consider: (1) the appropriate steps that should be taken to provide assurances of personal safety and adequate, efficient, and equitable distribution of assistance with respect to Salvadorans who are displaced within El Salvador or who have fled to other countries in Central America; (2) treaty obligations of the United States, humanitarian considerations, and previous practice of the United States respecting the treatment of aliens in similar circumstances; and (3) whether it is appropriate to extend, remove, or alter the temporary suspension of deportation.

Much has been made of S.377's temporary suspension of the deportation of Salvadoran nationals from the United States. It has been suggested that the more appropriate device for protection of deserving Salvadorans is an application for asylum under the Refugee Act. Moreover, it is said that a nationality specific device such as that provided by S.377 was rejected by Congress when it adopted the comprehensive approach of The Refugee Act.

As we have noted, the purposes of the Refugee Act and those of a temporary device such as this are quite distinct. The Refugee Act provides for the admission of persons who have a well founded fear of persecution on account of certain specified factors. When Congress passed the Refugee Act it was aware of the simultaneous and parallel existence of the practice of extended voluntary departure. While the legislative history of the Refugee Act indicates that Congress did wish to end the use of the parole power to permanently admit refugees from outside the United States, it indicates no intent to discontinue the practice of temporary suspension of deportation of specific nationalities for exigent humanitarian purposes. This is corroborated by the Administration's own continued use, since passage of the Refugee Act, of extended voluntary departure to benefit, nationals from other countries.

Furthermore, it is clear that not of all Salvadorans will qualify for asylum under the narrower grounds of eligibility for that relief. This does not detract from the very real dangers which will await them nevertheless upon their return to El Salvador. Nor is it desirable that they be encouraged to apply for asylum in order to protect themselves from deportation. The asylum adjudications system has been seriously backlogged. It is practical to remove inducements to ineligible persons to use the asylum process to protect themselves from deportation, particularly when the compelling nature of their fear of deportation suggests that they will use any available device.

We have witnessed in the last few years the spectacle of respectable, law abiding U.S. citizens being willing to violate the law because of their perception of duty to a higher moral and humanitarian imperative. The existence of "sanctuary" churches for the benefit of Salvadorans seeking "safe haven" indicates the extent to which failure to act on compelling humanitarian claims will continue to breed disrespect for the laws. The combined effect of this and the deleterous consequences of the existence of a large "underclass" of Salvadorans in our midst suggests that S.377 offers an opportunity to do well by doing good; to serve the national interest while maintaining our proud humanitarian traditions accomplishes its essential humanitarian and pragmatic purposes in a benign manner. It requires no long-term commitments. It requires that the already substantial premises upon which it is based be studied and corroborated in a joint effort of the administration and the Congress.

The American Civil Liberties Union urges prompt favorable action on S.377.

FOOTNOTES

[1] Indeed most reliable sources place this figure higher than the stated estimated. The Annual Report of the Inter-American Commission on Human rights (organization of American States), dated September 1982, reported 35,000 political deaths in the three previous years. See also "...in the face of cruelty: The Reagan Administrations Human Rights Record in 1984", Americas Watch, Helsinki Watch, Lawyers Committee for International Human Rights, January 1984, Pg. 38.

[2] Amnesty International Report 1984; This report covers the period of January to December, 1983, Amnesty International, Pg. 148.

[3] "...in the face of cruelty", ibid. at 35.

[4] Justice Denied, Lawyers Committee for International Human Rights, March 1985.

[5] Draining the Sea: Report on Human Rights in El Salvador, Americas Watch Committe; 6th Supplement, March 1985, Pg ii.

[6] Preston, "Salvadoran Rebels Kill 20 Villagers: Raids seen as return to tactics of earlier years of war". The Washington Post, Thursday, April 11, 1985.

[7] Orantes-Hernandez v. Smith, 541 F. Supp. 351, 354 (C.D. Cal 1982).

[8] Immigration and Naturalization Service. Asylum Adjudications: An evolving concept and responsibility for the Immigration and Naturalization Service. June and December 1982.

[9] Cox, "Well-Founded Fear of Being Persecuted": Sources and Application of a Criterion of Refugees Status. Vol. X:2 Brooklyn J. Int'l L. 333, 376 (1984).

[10] Sheeran, "'Sanctuary' Backers Anti-U.S., State Says", The Washington Times, March 14, 1985.

[11] Assistant Secretary of State Elliott Abrams in a letter to Representative Barney Frank, received January 2, 1985.

[12] 128 Cong. Rec. S831 (daily ed. February 11, 1982)(lettter of Alvin Paul Drischler, Acting Assistant Secretary for Congressional Relations).

[13] Gordon & Rosenfeld, Immigration Law and Procedure, vol. 1, 5-48 (1982).

[14] Salvadorans in the United States: The Case for Extended Voluntary Departure, ACLU Public Policy Report, April 1984, Pg 35 - 37.

[15] Peterson. Central American Refugee Flows: 1978 to 1983, U.S. Bureau of the Census. January 11, 1984.

TABLE I

ASYLUM STATISTICS, FISCAL 1981 - 1985**

(Applications Filed With INS District Directors)

FY 1985 (first 5 mos)
asylum applications granted: 30
asylum applications denied: 1,284
approval rate: 2.3%

FY 1984
asylum applications granted: 328
asylum applications denied: 13,045
approval rate: 2.45%

FY 1983
asylum applications granted: 163
asylum applications denied: 6,567
approval rate: 3.3%

FY 1982 (INS District Directors and Judges)
asylum applications granted: 69
asylum applications denied: 1,067
approval rate: 5%

FY 1981
asylum applications granted: 2
asylum applications denied: 154
approval rate: 1.3%

Cummulative - FY 1981 through February 1985
asylum applications granted: 592
asylum applications denied: 22,117
approval rate: 2.6%

TABLE II

DEPORTATION AND APPREHENSION STATISTICS**
FISCAL YEARS 1981 - 1984

FY 1984	
Salvadorans returned	3,890
Salvadorans apprehended and detained	18,971
FY 1983	
returned under final orders of deportation	3,175
persons otherwise required to depart	1,627
apprehended and detained	16,965
FY 1982	
returned under final orders of deportation	2,118
persons otherwise required to depart	3,454
apprehended and detained	13,890

FY 1981	
Salvadorans expelled by INS	10,473
Salvadorans apprehended by INS	15,940
FY 1980	
Salvadorans expelled by INS	8,589
Salvadorans apprehended by INS	11,762
Cummulative - FY 1980 - FY 1984	
Salvadorans expelled by the INS	33,326
Salvadorans apprehended by the INS	77,528

TABLE III

U.S. REFUGEE ADMISSIONS*
FISCAL YEAR 1984

ASIA	51,960
Soviet Union/Eastern Europe	11,000
Near East	5,246
Africa	2,747
Latin America/Caribbean	160
** Total Salvadorans: 67	
TOTAL	71,113

*Source: State Department
reprinted in Congressional Quarterly, Dec. 8, 1984

**Source: Immigration and Naturalization Service

ATTACHMENT II

American Civil Liberties Union Fund
of the National Capital Area
POLITICAL ASYLUM PROJECT
122 Maryland Avenue N.E.
Washington, D.C. 20002
202 543-4631

September 5, 1984

THE FATES OF SALVADORANS EXPELLED FROM THE UNITED STATES.

Summary

There are many well documented reasons for temporarily halting the deportations of Salvadorans to El Salvador. Information about particular individuals who have returned and suffered human rights violations is very difficult to obtain or confirm. Indeed, there is no individual information about the violent incidents which are of most concern in the policy judgement at issue, namely the danger from hostilities. Despite the extreme difficulty of establishing hard evidence of particular instances where Salvadorans have been returned and have suffered human rights violations, such evidence has been established in many cases. The State Department discounts such evidence, arguing that its "survey" proves that it is safe for Salvadorans to return. In fact this survey was superficial and conducted with no attention to reliability. The uncontroverted hard evidence of identified human rights violations which is established, and other considerations of the danger in El Salvador from military hostilities, establish that compelling Salvadorans to return to El Salvador at present would subject them to intolerable danger. This is unconscionable, and unworthy of the United States.

Introduction

The Reagan Administration has a longstanding policy of deporting Salvadorans to El Salvador, unless they can meet the strict standards of proof necessary to obtain political asylum in the United States. This policy has engendered intense controversy about both issues of principle and issues of fact. This analysis attempts to clarify one salient factual issue, viz. the known or likely experiences of persons who have been expelled to El Salvador.

The U.S. Immigration & Naturalization Service and Department of State have been criticized for unfairness in the adjudication of political asylum claims by Salvadorans. It is also suggested that because Salvadorans have fled a civil war they have legitimate fears of being unwitting victims of military hostilities, which are quite distinct from the very specific fear of political persecution which they would need to establish in order to obtain political asylum. The Administration has vociferously declined to accede to widespread public and bipartisan Congressional pressure to temporarily suspend the deportations. Religious, humanitarian and civil rights groups have argued that many Salvadorans are afraid of returning because they legitimately fear that they will face intolerable danger upon their return, and that they ought not therefore to be forced to return there. The Administration has argued that the Salvadorans who do not qualify individually for asylum, under extremely strict standards of proof, have nothing to be afraid of, and that they may safely be returned.

The Administration supports this conclusion on the premise that no evidence exists that persons have been persecuted in El Salvador because they were deported from the United States. This position is articulated in recent Administration testimony before Congress on HR 4447. The Administration has purportedly had the U.S. embassy in San Salvador conduct a survey of deported persons, and has suggested that it confirms the lack of manifest danger to Salvadorans who are sent back. The conclusory letters which represent the only written description of that survey or its method are attached hereto.(Attachment I)*

In concluding that there is no evidence of harm to persons who are sent back, the Administration has ignored or discounted much more solid information to the contrary, including five cases of death or disappearance established from public record sources (documented in Appendix III of ACLU Public Policy Report, Salvadorans in the United States, dated April 1 1984), and a further 112 likely cases identified herein (Attachment II), seven of which were quickly confirmed at the State Department's request by independent Salvadoran human rights agencies. The Administration has also concerned itself with a far narrower range of information than is properly relevant to the policy question of the U.S. obligation to grant temporary protection to civilian victims of military violence (war refugees), or persons whose reasons for fleeing El Salvador may not meet the narrower standards for the granting of political asylum.

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*Retained in subcommittee files.

The Issue - Debating at Cross Purposes

It must be emphasized at the outset that the Administration is addressing a far narrower issue than is relevant to the public policy implications of temporarily suspending deportations to El Salvador *en masse*. The Administration argues that there is no evidence that Salvadorans have been persecuted upon their return *because they had been deported from the U.S.* This is a red herring. It is extremely difficult, under current unstable conditions in El Salvador, to determine the precise reason that a person is killed or disappeared. Indeed, the Assistant Secretary of State for Human Rights has publicly acknowledged that a study of any scope on this question is a "ridiculous" idea. The issue is not whether a person will be targeted because s/he has returned from the U.S. Even if a deported Salvadoran faces no greater dangers than the person who never left El Salvador, conditions there are presently such as to make it unconscionable to send people back.

The debate over the policy question of a temporary halt to deportations to El Salvador must necessarily have a broader focus, since its purpose is to avoid forcibly expelling war refugees to the scene of hostilities. In contrast, if it could be proved that individuals were in danger because they had been deported or because of other identifiable characteristics, such a specific finding would be a legitimate basis for individually granting political asylum to others sharing those characteristics. This is because political asylum is designed to benefit persons who can specifically prove that they fear particular forms of persecution. This degree of specific proof has never been required or available when, in the past, this and other Administrations have granted temporary relief from deportation to Poles, Afghanis, Lebanese, or Ugandans as a group. What is at issue in such a group-wide determination, that it is dangerous to return to a particular country, is precisely a determination of the *general* conditions of pervasive violence and instability in that country.

Temporary group-wide relief from deportation, in contrast to individual applications for political asylum, is a device which allows our government to discharge its obligations, under the Geneva Conventions, to civilian victims fleeing hostilities. It seeks to avoid returning persons to a situation of widespread danger from civil strife. The public record on recent events in El Salvador amply illustrates that these considerations apply to Salvadorans in the U.S. with at least as much force as they apply to Poles and others in the U.S. who already enjoy temporary relief from deportation.

We have inquired of official and unofficial Salvadoran human rights monitors whether the fact that a victim of persecution was deported from the U.S. is ever reported. We have been told by all that persons who are returned are in danger not because of the fact that they have been returned from the U.S. but because of the general situation in El Salvador and because of their particular vulnerability to violence. This implicitly endorses the distinction made herein between the pervasive danger that makes group-wide protection appropriate and the specific reasons for persecution in the narrower sense of the term. Thus, a member of the government Human Rights Commission of El Salvador has testified in a recent congressional hearing that Salvadorans in the U.S. should not now be returned to El Salvador, while the Executive Secretary of the same Commission has made the same plea in his meetings with officials of the U.S. Immigration & Naturalization Service.

The extent of general danger of the type which would be relevant to temporary relief from deportation can only be determined by an educated assessment based upon recent events in El Salvador. There are no lists available of identified individuals who have suffered the kinds of dangers to life and limb which are relevant in this context. There is no listing of accidental civilian victims of military hostilities. Many massacres and bombings in violation of the Geneva Conventions are also unreported.

It must also be noted that the available lists of individual victims of political violence are incomplete. Lists of victims of violence directed against particular individuals for identifiably political reasons,as distinct from victims of war hostilities, are all that are available. Salvadoran human rights agencies estimate that between 30 and 60% of all such individual abuses are never reported. Many others are captured for common crimes as a pretext for their political capture, again preventing identification as cases of political persecution. Finally, recent changes in forensic reporting procedures for deaths in El Salvador make it more difficult to identify the precise cause of a given death. Although required to by law, Justices of the Peace no longer inspect bodies at the scene of death, but rather at the morgue. Analytical categories for reporting the cause of death have become less precise. A person shot in the head might be described as having suffered a "cranial traumatism", a person shot in the body as having suffered an "internal hemmorage". Thus, many acts of political violence will forever remain hidden by obscured evidence.

What Evidence is Available?

It is noteworthy that, in the face of such insurmountable obstacles to the establishment of hard evidence, individuals are periodically identified who were deported from the U.S. and subsequently killed, disappeared, or otherwise harmed. This information, which comes from various sources, has been provided to the Department of State, which has independently verified several cases. It is clear therefore that, despite assertions to the contrary, the State Department has evidence which indicates clearly that persons were deported and subsequently persecuted or killed.

Several cases of persons killed or disappeared following deportation were presented in Appendix III of an ACLU report, *Salvadorans in the United States, The Case for Extended Voluntary Departure*. Five of these were documented from public sources, and a further nine cases attested to in affidavit form.

Thereafter the ACLU made a preliminary comparison of the names, addresses and other information about persons deported or otherwise required to return to El Salvador from the U.S. and about persons reported by human rights agencies to have suffered persecution upon their return to El Salvador. We had available to us fewer than a half of the names of *reported* victims of human rights violations, and, because of illegibility or incomplete or inaccurate Spanish surnames, could likewise use only a half of the names of returned Salvadorans which were obtained from the U.S Immigration and Naturalization Service. Upon a preliminary comparison we found that 52 identified individuals seemed to have been killed, 7 reported arrested, 5 held political prisoners, 47 disappeared, and 43 captured and disappeared in violent fashion.

We stated at the time that we made these results available that were an incomplete reflection of the magnitude of the problem. This was because of the incompleteness of the available information and the stringent methodology which we had used to compare such information as was available. Many more cases would be identified if we had more comprehensive basic information to work from or were willing to use a less stringent methodology for identifying likely cases. We stated that a further degree of proof could only come from an on- site investigation, which we judged to be dangerous to all concerned, and unlikely to yield frank answers to questions about mistreatment by authorities. In this we agreed with the assessment of the Assistant Secretary of State for Human Rights, who had judged such an enterprise ridiculous.

We did however make the results available to the State Department, which quickly verified 7 of these cases, involving three deaths, two violent disappearances, one capture and one unknown fate. The scale of the misery that this preliminary finding reflects is not adequately conveyed by the mere number or by the solidity of the evidence. It is better conveyed by a description of the circumstances of one such incident, which indicate that one of the persons among the seven confirmed cases violently disappeared along with 6 members of his family, all but one of them children aged from 18 months to 16 years old.

Although not relevant to the policy question of temporary group-wide protection from deportation, a measure which is supported by other compelling evidence of the generally intolerable level of danger in El Salvador, specific evidence of identifiable individuals suffering persecution upon their forcible return to El Salvador can now be said to have been established as a fact which confirms the likelihood of other less well documented cases.

The U.S. Embassy Survey

When faced with hard evidence, the Administration has discounted its significance, suggesting that such incidents, although they are proved with great difficulty, effort and care, are uncommon. This flies in the face of common sense, and takes no account of the incompleteness of reporting and recording, which would suggest that many more cases will have actually occurred than can be found or documented.

Rather than accept the results of an investigation of identified cases of violations, the State Department offers the results of a "survey" conducted by the U.S. embassy in San Salvador which, it argues, proves that it is safe for Salvadorans to return to El Salvador. In fact this "survey" was carelessly conducted, with no attention to detail, reliability or personal security, and its findings, or lack of them, can be granted little credence. (Such information as is available about the method of the embassy's survey has been obtained from the two letters from Assistant Secretary of State Abrams to Congressman Mazzoli, which are attached hereto, and from a personal meeting with the consular officer who was responsible for the survey.)

The first problem with the embassy's survey relates to the size and nature of the sample studied. Although the total number in the survey is stated as 482, only 211 of the persons in that group were ever contacted in any fashion at all. The rest were never reached. This small sample was chosen from among Salvadorans sent back in a very short period and only from Los Angeles and was therefore neither a representative cross section nor a random sample. The U.S. Immigration & Naturalization Service is notorious for the inaccuracy of its recordkeeping, particularly with respect to foreign names, and it is almost certain that the names and addresses on the lists provided to the embassy were so inaccurate as to be a useless investigative device. Furthermore, the sample represented persons deported at the end of 1983. It is clear that, with such a recent sample, it is less likely that an incident has yet occurred or been reported to a given member of the group. Even of this limited and unrepresentative sample, only 120 were directly interviewed, 39 of those by phone.

There remain serious questions about the reliability of the method used to investigate this miniscule and unrepresentative sample. There is a serious question about whether the circumstances under which the embassy solicited information about human rights violations were such as to elicit accurate information. This is of course of critical importance where one wishes to conclude from a small sample that something has not happened or is unlikely to happen. If an investigation is not designed so as to thoroughly elicit information, the lack of evidence resulting from it can have little significance.

El Salvador is a country at civil war, and under such circumstances it is reasonable to anticipate extreme difficulty in the collection of such sensitive information. In the context of a breakdown in communications systems and obstacles to unimpeded travel, it is wise to conclude that such incidents as occur will not easily come to light. It is advisable under such circumstances to be particularly rigorous in the design and conduct of the inquiry. It is at the very least advisable to refrain from concluding that there are no problems simply because no problems have come to light in such a context.

The initial survey was conducted through postal correspondence. A postal workers' strike was in progress in El Salvador for much of this time, and the mails suspended. This clearly presented an obstacle to the effective and complete communication essential to such a survey. Persons were encouraged in letters to contact the embassy "to speak about a matter of mutual interest", and were never told, at this or subsequent stages of the investigation, of the purposes of the questioning. This did nothing to alleviate the natural, and in El Salvador usual, reluctance to publicly discuss problems one might have had with the authorities. Such an opening gambit, in order to encourage a response, also vaguely suggested that the "matter of mutual interest" was some unspecified immigration matter, perhaps some immigration status for which persons might be eligible. Since many persons understandably believe that immigration to the U.S. is available only to people who have stayed out of trouble, this in fact encouraged people to refrain from divulging the relevant information.

By the embassy's own account, little investigation was possible in the "conflict areas" of El Salvador, now extending over about two-thirds of the country. Indeed, in one case where a person was identified as dead, the embassy was unable to follow up at all because this was in the conflict-ridden area of the San Miguel volcano. This merely serves to underline the fact that it is impossible to gather information in precisely those areas where there is greatest danger.

Many of the "results" reported by the embassy survey were in the form of negative findings, such as "no mistreatment reported". These responses were in many cases obtained by phone. A telephone conversation with an unknown interlocutor is hardly a reassuring medium under the best of circumstances, and it is no surprise that persons report nothing under such suspicious and insecure circumstances. Moreover, since very few persons responded to the invitation to come to the embassy for an interview, most were interviewed by a Salvadoran who visited them in their neighborhoods and asked them questions without identifying himself with the U.S. embassy, or in any other way, and without indicating the purpose of his questions. In order for this to yield reliable information, the respondents would have had to respond without reservation to an unidentified stranger's questions about whether they had been mistreated by the authorities. In a society where personal security frequently depends upon keeping one's own counsel about experiences with the authorities, and where one is reported for being a complainer or trouble maker, it is unrealistic to expect such forthright answers.

Our conversation with the embassy reveals that no precise records had been kept, as the survey proceeded, regarding such essential matters as how many persons were contacted in what manner, i.e. by letter, by phone, by personal interview. Without such information it is impossible to establish precisely what is meant by the various categories into which Mr. Abrams breaks down the results.

Nor had records been kept about the exact numbers responding in different ways. Indeed, embassy personnel could not even estimate the rough numbers who had responded in specific ways. All this suggests that the "results" presented in Mr. Abrams' letter are highly impressionistic and unreliable. Two details indicate most clearly the inadequacies of the embassy's survey for serious policy making and the continuing need for the study which is called for in HR 4447/S 2131. Both are in the form of inexplicable discrepancies between the letter dated June 5 and the undated letter of two weeks later. In this short period, the number of fictitious or incomplete addresses reported increased from 197 to 249. If this figure represented information still being gathered, the change in numbers would be explicable. However, the numbers of fictitious or incomplete addresses were in fact identified at the outset and would, if properly counted, have been a fixed number; indeed the fictitious or unknown addresses were the reason that over half the names on the list were initially shelved and never investigated further. The discrepancy in these numbers between the two letters can only be the result of careless basic counting, which is itself merely symptomatic of an extremely careless investigation. In a similar vein, the undated letter describes 140 cases in conflict areas while the June 5 letter counts 127 cases of the same kind. This too is not explicable by reference to uncompleted investigations, since the number of "pending investigations" is included in the earlier total.

All this can only suggest that the embassy survey was conducted without any attention to detail or reliability. Moreover, there is a serious inconsistency in the Administration's interpretation of the significance or finality of its own survey. The embassy has clearly stated to a representative of our office that the survey is conceived of as an ongoing enterprise and that the information now available is not considered definitive. Although the Assistant Secretary of State for Human Rights states in his undated letter to Mr. Mazzoli in mid-June that "The survey is now complete", the consular officer in charge of the survey told us on July 13 that the survey is not yet completed.

The embassy's and the State Department's own view of the adequacy of their survey is implicit in the fact that there have been continuing efforts, following the dispatch of Mr. Abrams' letter to Mr. Mazzoli, to ascertain through Salvadoran human rights agencies the fates of persons who, rather than being chosen at random from INS records like the survey sample, have been identified by the matching of human rights lists and INS lists as having suffered human rights violations upon return. These continuing efforts have yielded results which contradict the findings of the survey, specifically the confirmation of the seven cases referred to above.

Other Information Relevant to the Likely Fates of Expelled Salvadorans

It is clear that several cases have been documented, with varying degrees of certainty, of identified individuals expelled from the U.S. and persecuted upon their return. For all the reasons discussed above, these cases have been documented against extreme odds, and therefore certainly suggest the existence of many others less well documented. It should be emphasized that the available human rights information reports only the most egregious incidents of abuse. It does not report incidents of harrassment, employment related sanctions, homelessness, danger from travel or from the pursuit of everyday economic activities, or many other problems which are indisputably relevant to the humanitarian assessment of the dangers to be faced by a person expelled from the United States. For the reasons discussed above, this evidence also does not reflect quite other dangers more relevant to the issue at hand. Such dangers are more easily understood by reference to the general military situation in El Salvador and the general climate of insecurity and suspicion to which a Salvadoran returning after a long absence will be particularly vulnerable. These are more fully described in a companion document entitled General Considerations in Assessing the Danger to Salvadorans Expelled to El Salvador.

Conclusion

There are many well documented reasons for temporarily halting the deportations of Salvadorans to El Salvador. Information about particular individuals who have returned and suffered human rights violations is very difficult to obtain or confirm. Indeed, there is no individual information available about the violent incidents which are of most concern in the policy judgement at issue, namely the danger from hostilities. Despite the extreme difficulty of establishing hard evidence of particular instances where Salvadorans have been returned and have suffered human rights violations, such evidence has been established in many cases. The State Department discounts such evidence, arguing that its "survey" proves that it is safe for Salvadorans to return. In fact this survey was superficial and conducted with no attention to reliability. The uncontroverted hard evidence of identified human rights violations which is established, and other considerations of the danger in El Salvador from military hostilities, establish that compelling Salvadorans to return to El Salvador at present would subject them to intolerable danger. This is unconscionable, and unworthy of the United States.

ATTACHMENT III

ECONOMIC MIGRANTS OR REFUGEES FROM VIOLENCE? A TIME SERIES ANALYSIS OF SALVADORAN MIGRATION TO THE UNITED STATES

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March, 1985

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ABSTRACT

Large numbers of Salvadorans have been coming to the United States over the past several years. This paper provides an empirical analysis of the motivations of these migrants using aggregate time series data on political violence in El Salvador and on Salvadoran migration to the U.S. This research finds a strong statistical relationship between the level of political violence in El Salvador and the numbers of Salvadorans who migrate to the U.S.

INTRODUCTION

A heated debate has arisen over United States policy toward the large number of Salvadorans and Guatemalans who have come to this country in recent years. The question is whether to continue deporting these people or offer them some special protections; in this regard the key point of debate is the motivation of the emigres. Officials of the U.S. Department of State and the Department of Justice have maintained that Salvadorans and Guatemalans who come here are merely economic migrants in search of a better life, and as such are ineligible for any special treatment under U.S. immigration law.[1] Staff members of private legal aid agencies, in contrast, have maintained that the vast majority of Salvadorans and Guatemalans who come to this country do so out of fear for their lives in response to political violence in their home countries.[2]

In a statement representative of administration views, Deputy Assistant Secretary of State Scott Burke was quoted in the New York Times as stating "we think the majority of these people are economic migrants."[3] Immigration and Naturalization Service (INS) spokesman Duke Austin has argued that Salvadorans must be economic migrants because they "could stay in Mexico free from persecution, but they don't because they want the economic opportunity offered in the United States."[4] Elliot Abrams, head of the State Department Bureau of Human Rights and Humanitarian Affairs (BHRHA) has said that "there are an extremely large number in the United States illegally who are here for reasons that are purely economic," and that "a substantially large number are not leaving violence or seeking asylum. Virtually all of them come up through Mexico, a country at peace. If all they wanted to do is flee violence, they would have stayed in Mexico."[5]

In contrast to the administration position, legal staff of private agencies aiding refugees from Central America have claimed in sworn affidavits and in interviews for this study that virtually all of the people coming into the U.S. from El Salvador and Guatemala are fleeing political violence. Their views are based on interviews with hundreds of Central Americans. All of the refugee aid agency staff members I interviewed reported that fear of violence was the predominant reason that their clients had come to the U.S. All reported that the vast majority of their clients are in the U.S. only reluctantly and plan to return home when it is safe to do so, although most are uncertain as to when this will be. All reported that many of their clients had suffered considerable hardships, many at the hands of Mexican nationals, during their travels to and across the U.S. border. Several of the people I interviewed indicated that Mexican officals have redoubled their efforts to apprehend and deport Central Americans, thus increasing the pressure on Central Americans to move on to the U.S.[6] Sergio Aguayo of El Colegio de Mexico reports on the basis of over a thousand interviews with Central Americans in Mexico that these people are overwhelmingly motivated by political fear. He furthermore reports that Central Americans in Mexico live under very poor and vulnerable conditions due to shortage of work opportunities and the absence of legal protections.[7] Several of the people I interviewed reported that Mexican sources had told them that the U.S. Department of Justice has put pressure on Mexican officials to take stronger measures to apprehend and deport Central Americans in Mexico, thus reducing the flow of Central Americans to the U.S. This is a striking allegation when juxtaposed with administration officials' portrayal of Mexico as a safe haven for Central American refugees.[8]

It is difficult to reconcile these two diametrically opposed evaluations of the motivations behind the Central American exodus. Both sides of the debate have access to individual case information about Central Americans migrants, yet they arrive at opposite conclusions. The two sides have different preferences as to what U.S. policy should be, and their respective analyses of the situation reflect these biases. In an effort to contribute some empirical analysis of the motivations of Central American emigres using a methodology based on actual behavior of Central Americans rather than interviews with them, this research uses aggregate time-series data on political violence in El Salvador and Salvadoran migration to the U.S. It will evaluate whether there is a correlation over time between the level of political violence in El Salvador and the level of Salvadoran migration to the United States. The findings, to anticipate somewhat, are strongly positive. Regrettably, the quality of information on political violence needed for the sort of analysis undertaken here is unavailable in the case of Guatemala.[9] This essay will therefore focus exclusively on the case of El Salvador, although it is my belief -- and that of many people who monitor human rights conditions in Central America -- that the political violence in Guatemala is fully as threatening as in El Salvador.

SALVADORAN MIGRATION TO THE U.S.:

Salvadoran migration to the U.S. did not begin with the outbreak of overt civil war in El Salvador in 1980. The dynamics of this migration over prior decades are difficult to evaluate, however, because the INS only began in October of 1976 to keep separate records of the numbers of Salvadorans it caught entering the U.S. Prior to this date, Salvadoran entrants were grouped along with other Central Americans in one category. Although estimates of the undocumented Salvadoran population currently in the U.S. are extremely crude, it appears that roughly half a million Salvadorans have already settled here.[10] Salvadorans have a long-standing reputation for economic migration within Central America and Mexico. This reputation has been the primary basis for administration claims that Salvadorans who come to the U.S. are economic migrants, rather than political refugees. Critics of the administration's position have not generally challenged the claim that Salvadorans have in the past migrated to the U.S. for economic reasons. They point out, however, that the human rights situation in El Salvador deteriorated rapidly in the late 1970s and has gotten still worse under the conditions of open civil war that have existed in El Salvador since 1980. Observers in Central America have reported that widespread flight from El Salvador began in early 1980. In view of these conditions, critics question administration assertions that the 100,000 to 200,000 Salvadorans who have entered the U.S. since 1980 are economic migrants, just like those who preceded them.[11]

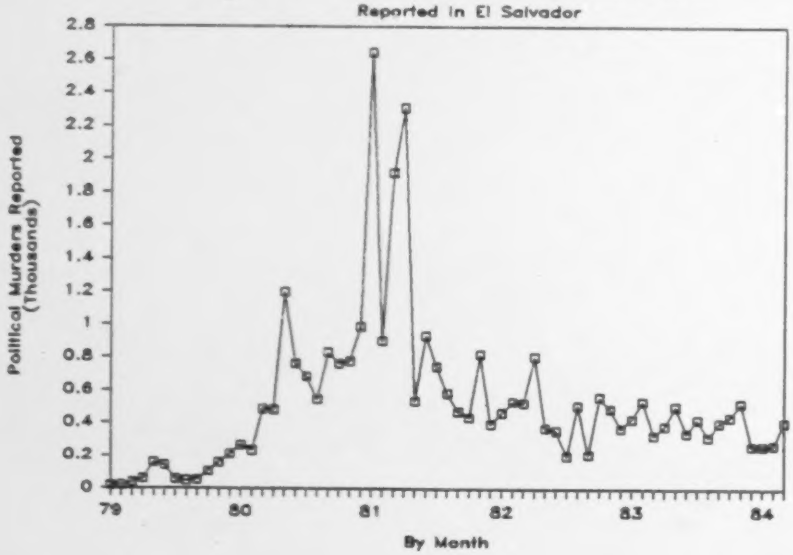
It is possible that political fear played an important role in motivating Salvadoran migration to the U.S. throughout the 1960s and 1970s; for the years since 1980, it appears very likely that political fear has dominated peoples' motives. Reports of Amnesty International indicate that violent political repression existed in El Salvador throughout this period.[12] The impact of such repression on Salvadoran out-migration is difficult to evaluate for earlier years. Beginning in 1979, organizations such as Socorro Juridico (affiliated with the Archdiocese of San Salvador) and Americas Watch have published comprehensive quantitative accounts of human rights violations in that country. These reports show a rising incidence of human rights violations through 1979 followed by a massive increase during 1980 and early 1981 (see Figure 1). This quatitative evidence, combined with even a cursory reading of the detailed accounts of torture and mass killing included in this literature, creates the suspicion that during the last several years many Salvadorans have had reason to fear for their lives.

According to Socorro Juridico, an organization affiliated with the Archdiocese of San Salvador, over 1,000 Salvadorans were killed by military and paramilitary "security forces" in 1979. In 1980, this number grew to almost 8,000; in 1981, almost 14,000 people were murdered.[13] It appears that although elements of the FMLN have been responsible for some killings of civilians, the vast majority of violence against the general population has been carried out by the Salvadoran military and by paramilitary death squads, both of which in many instances operate under a common leadership and involve the same personnel. By way of example, for the second half for 1982, organization which replaced Socorro Juridico in early 1982 in the role of human rights monitor for the Archdiocese) for 26 killings of civilians. In constrast, the "security forces" killed 2340 civilians during the same period.[14] Killings by military and paramilitary forces have been accompanied by widespread torture, rape, forced "disappearance," and destruction of vital crops and property. Much of the violence has been random, designed to terrorize both the urban and rural populations into submission.[15]

Because civilians living in or near guerrilla-controlled areas are considered to be masas or guerrilla supporters, the army generally treats them as legitimate targets.[16] In fact, Salvadoran army officers have admitted that their main tool for convincing rural people to stop helping the guerrillas is terror.[17] This is borne out by reports from Church agencies which give scores of eyewitness accounts of acts of terror by the military against unarmed civilians in areas in which the Army suspects the FMLN to be active. Eyewitnesses, for example, have identified the U.S. trained Atlacatl and Ramon Belloso batallions as having been the prepetrators of some of the most heinous acts of rape, torture and murder.[18]

The most recent report from Americas Watch indicates that violence of the "death squad" type has fallen off, but that the Salvadoran military has been engaged in a stepped-up campaign to drive people out of areas in which FMLN forces operate. As a result, many civilians in rural areas are killed and injured by shelling, bombing, and small-arms fire by the Salvadoran military.

Figure 1 Political Murders



Americas Watch describes a common pattern in which the armed forces use shelling and aerial bombardment to drive people out of specific areas, then send ground sweeps which often summarily kill, injure, or otherwise mistreat any civilians found to have remained there. This same report, along with press accounts, indicates that the FMLN has recently engaged in a major forced-recruitment compaign in rural areas and that this has contributed to displacement of people from several areas.[19]

Such violence has forced thousands of rural Salvadorans from their homes. This mass displacement began in March of 1980 when the land reform proclamation precipitated military and paramilitary sweeps through the countryside, causing large numbers of rural Salvadorans to flee to neighboring departments and countries.[20] Numerous other such movements have been reported in both the press and publications of human rights monitoring groups.

Several organizations have tried to estimate the numbers of displaced Salvadorans within El Salvador and Salvadoran refugees in other countries. A recent U.S. Senate staff report estimated that 468,000 people are displaced within El Salvador. This figure is based on the number of people registered with Church, U.N. and Red Cross agencies providing relief to the displaced. The real number, however, may be as much as twice that, according to a Salvadoran Red Cross spokesman.[21] The United Nations High Commissioner on Refugees (UNHCR) has reported that over 244,000 Salvadoran refugees reside in other Central American countries and Mexico.[22] Combined with the 500,000 Salvadorans estimated to be in the U.S., these figures indicate that over a quarter of the Salvadoran population is either displaced or out of the country.[23]

Thus there is substantial evidence that the lives of many Salvadorans are indeed threatened by political violence and that many people have left to escape that violence. Reports of Catholic Church, Red Cross and UNHCR agencies providing services to displaced persons and refugees indicate that very few men, especially young men, feel safe in the displaced persons camps in El Salvador or the refugee camps in Honduras. Security forces in both countries tend to assume that male youths are active insurgents, with the result that young men in the camps are particularly vulnerable to capture, torture, and murder.[24] With serious civil conflict in progress in Guatemala, conditions are similarly risky for Salvadoran men there.[25] Not surprisingly, a large majority of the Salvadorans who end up in the United States are young men.[26]

One of the contentions of the U.S. State Department about Salvadorans in the U.S. is that if they were really political refugees, they could have stayed in Mexico. U.S. officials have claimed that Salvadorans' decisions to extend their journey on to the U.S. indicates a primary interest in seeking better economic opportunities.[27] It should be remembered, however, that Salvadorans who flee to Mexico for political reasons must find work before their resources run out; otherwise they face the possible necessity of returning to El Salvador. At the same time, economic conditions in Mexico are extremely difficult for Mexicans, and more so for newly-arrived Salvadorans who are very likely to be at a disadvantage in seeking work. As Sergio Aguayo points out:

> "These people are weak economically and extremely vulnerable from the legal point of view....They try to disguise themselves as Mexicans (buying forged documents and obtaining information on daily life in Mexico) because they are extremely vulnerable to extortion by minor officials."[28]

Understandably, many decide to travel straight through to the U.S. primarily because their ability to remain outside of El Salvador depends on their economic viability. Moreover, as mentioned above, Aguayo as well as staff members of refugee aid organizations in the U.S. report that in the last year, Mexican officials have adopted stricter policies toward Salvadorans, leading to an increase in deportations back to El Salvador.[29]

MODELLING SALVADORAN MIGRATION

The central issue is whether Salvadorans who have been coming to this country since 1979 have been motivated primarily by fear of political violence. To move toward an answer to this question, I have used a multivariate linear regression model to predict the month-to-month variation in Salvadoran migration into the U.S. on the basis of indicators of political violence in El Salvador. On an individual level, the hypothesis is that a person will leave El Salvador when someone close to him or her has become a victim of political violence or when the individual is directly threatened with such violence. It is expected that monthly fluctuations in the levels of political violence in El Salvador will be reflected by corresponding fluctuations in the numbers of Salvadorans entering the U.S. in subsequent months.

Measures of Salvadoran Migration:

Since most Salvadorans enter the U.S. without immigration inspection, there are unfortunately no completely reliable data on the numbers of Salvadorans who enter in a given month. Since October 1976, however, the U.S. Immigration and Naturalization Service (INS) has kept records of the numbers of Salvadorans that it apprehends trying to enter the country.[30] The INS estimates that of the Salvadorans who enter the U.S. illegally, 25% are eventually caught.[31] These figures are broken down according to the length of time that the Salvadorans were in the U.S. before being apprehended. For the purposes of this analysis, I have used the figures for people caught at entry or within 72 hours of entry, so as to have a stable indicator of the relative numbers of Salvadorans trying to enter the U.S. from one month to the next.

Variations over time in the number of people caught by the INS are partly a function of fluctuations in INS apprehensions efforts. Thus, any increase in INS patrol activity or capability might boost the number of apprehensions in the absense of an actual rise in the numbers of Salvadorans trying to enter the U.S. This raises a question concerning the validity of apprehensions of Salvadorans as an indicator of Salvadoran migration. To control for this confounding of enforcement efforts and actual migration flows, I include the level of apprehensions of Mexicans in the model as an independent variable. Like Mexicans, virtually all Salvadorans entering the U.S. do so via the Mexican border. INS enforcement efforts should affect both groups roughly equally. Some of the variation in the number of Mexicans apprehended is the functional result of fluctuations in INS enforcement. By using Mexican apprehensions as an independent variable in a multiple regression, I account statistically for the portion of variance in Salvadoran apprehensions also attributable to variations in INS enforcement. In other words, multivariate ordinary least squares regression treats any covariation of the Mexican and Salvadoran variables as being "explained" by the Mexican variable. Some part of this covariation is the result of the shared influence of INS enforcement on both variables.[32]

While the hypothesis that I hope to test is that Salvadoran migration to the U.S. results from political violence in El Salvador, there are some obvious non-violence factors which must be included in a correctly specified model of Salvadoran migration. In particular, the model must account for the economic pull factors that affect all Mexicans and Central Americans by virtue of their living within fairly close proximity of the labor market of the U.S. It must also account for economic push and pull factors that affect the large numbers of Salvadorans living in or passing though Mexico. Although Salvadorans in Mexico are probably more vulnerable than Mexicans to sags in the Mexican economy, major fluctuations in both the Mexican and U.S. economies create similar incentives for both Mexicans and Salvadorans. It is also possible that recent public discussion of an immigration amnesty in the U.S. may have encouraged both Mexicans and Salvadorans to migrate to the U.S.

The Mexican control variable therefore serves a dual purpose in this model by accounting for these general economic (and U.S. public policy debate) influences as well as for the INS enforcement factors mentioned above. Mexicans presumably migrate to the U.S. mainly for economic reasons. To the extent that Salvadorans migrate to the U.S. in response to the same incentives that influence Mexican migration, the Mexican variable in multiple regression will pick up that proportion of variance in Salvadoran migration that responds to such considerations, leaving unexplained the variance in Salvadoran migration attributable to factors not shared by Salvadorans and Mexicans. I am not claiming that the Mexican variable accounts for all of the possible economic incentives influencing Salvadorans. As discussed below (p.22), however, I have tested various indicators of Salvadoran economic conditions as predictors of Salvadoran migration and have found none that were statistically significant. I am therefore claiming that the Mexican variable accounts for the most significant economic pull from the U.S. and economic push from hardships on Salvadorans living in Mexico.

One characteristic of the Mexican variable that deserves mention is its seasonality. Time plots of Mexican and Salvadoran apprehensions (see Figures 2 and 3) show some degree of seasonality in both series, but a much clearer pattern in the Mexican series. This pattern probably results from the heavy role of Mexican migrant labor in U.S. agriculture. Salvadoran migrants as a group are more heavily concentrated in major urban areas. It is likely, therefore, that the seasonal pattern that is evident in the Salvadoran series is an artifact of seasonal fluctuations in INS enforcement in response to Mexican migration. To investigate the impact of seasonality on regression results, I seasonally adjusted the Salvadoran and Mexican apprehensions series (see Figures 4 and 5) and repeated my regressions using these adjusted series. The results are discussed below (p.21) and in endnote 45. Readers should note while inspecting Figures 4 and 5 that when the seasonality of both series is removed, a dramatic difference becomes visible in the patterns of Salvadoran

Figure 2 Salvadorans Apprehended by INS

Within 72-Hours of Entry

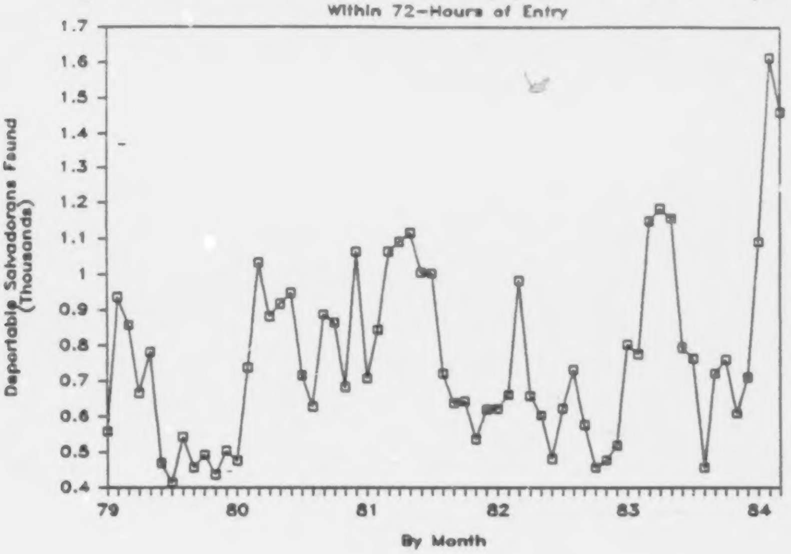


Figure 3 Mexicans Apprehended by INS

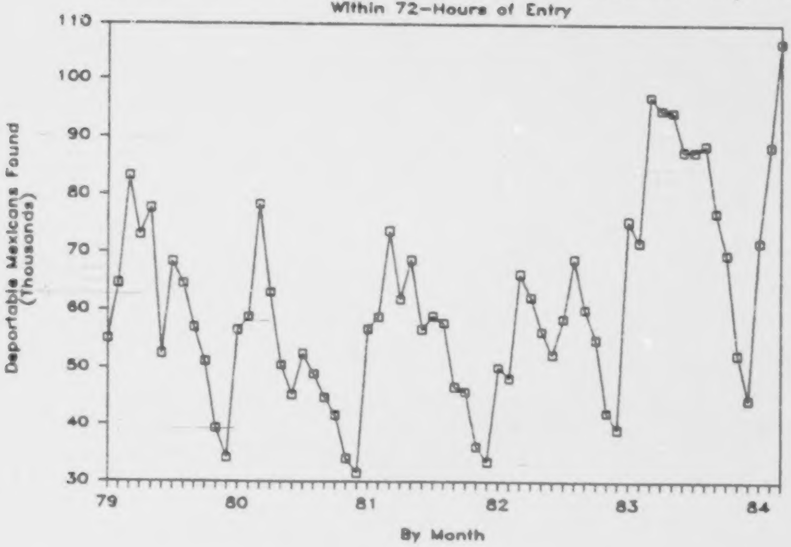


Figure 4 Salvadorans Apprehended by INS

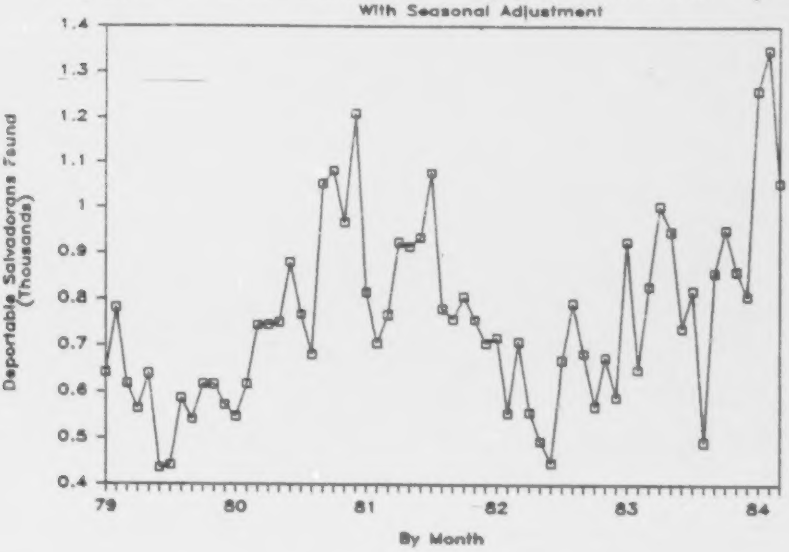
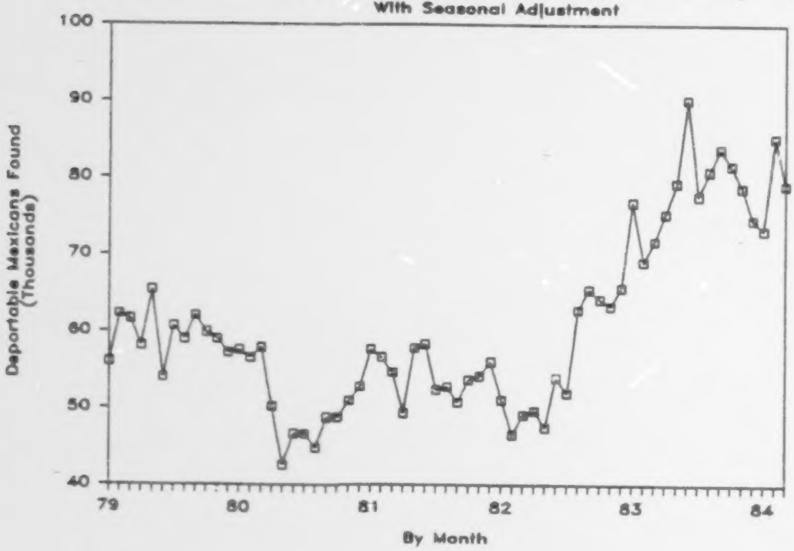


Figure 5 Mexicans Apprehended by INS



and Mexican apprehensions from 1980 to the beginning of 1982. This was the period of greatest death squad activities. The bulge in the level of Salvadoran apprehensions suggests the sort of impact that political violence may have had on Salvadoran migration.

To summarize, the role of the Mexican control variable is first to ensure the validity of Salvadoran apprehensions as an indicator of Salvadoran migration by controlling for enforcement effects and second to statistically isolate or control for some of the variance in Salvadoran apprehensions attributable to causes other than political violence. It is not possible to determine which of these two sets of factors accounts for the bulk of the covariation of Salvadoran and Mexican apprehensions. For the purposes of this paper, it doesn't matter. The goal of this analysis is to evaluate the impact of political violence on Salvadoran migration to the U.S. Perfect control of all of the variables other than political fear affecting the numbers of Salvadorans caught in the U.S. is not possible. By using the Mexican apprehensions variable to control approximately for economic and INS enforcement factors, however, it should be possible to isolate and measure the rough magnitude of the contribution of political violence to Salvadoran migration.

Measures of Political Violence:

To construct an indicator for incidents of political violence, I made use of data provided by two agencies of the Catholic Church in El Salvador. From 1979 to mid-1982, an organization known as Socorro Juridico collected monthly statistics on political murders and other human rights violations by the Salvadoran military and paramilitary forces. Beginning in 1982, the task of collecting this information was taken over by a newly-formed organization known as Oficina Tutela Legal. The Archdiocese of San Salvador set up Tutela Legal as a successor to Socorro Juridico because church officials felt that Socorro Juridico was under-reporting human rights violations by the FMLN.[33] It should be noted that while Socorro Juridico was indeed guilty of ignoring FMLN violations, the incidence of such violations subsequently reported by Tutela Legal has been very low in comparison with the numbers of violations committed by the security forces. Therefore, while the Archdiocese was correct in principle in requiring that FMLN abuses be reported, the addition of such information to Tutela Legal's reports does not result in a significantly different picture of human rights conditions in El Salvador than that provided by Socorro Juridico.[34]

For the purposes of this analysis, the data gathered by these two groups will be treated as a single time series, since both organizations performed essentially the same role and used the same methodology. Both required testimony from eyewitnesses and/or immediate family members before recording a case of murder or forced disappearance.[35] The main difference between the organizations, other than their policy on reporting FMLN abuses, was that Tutela Legal initially had a slightly smaller staff than Socorro Juridico.

As my main indicator of the overall level of political violence in El Salvador, I have used the Socorro Juridico/Tutela Legal data on political murder, as opposed to other forms of violence. Because so many of those who disappear are ultimately killed, inclusion of the level of disappearances in this analysis as a second indicator of political violence would lead to problems of double-counting and multicollinearity. Numbers of disappearances are therefore excluded. Other kinds of violence, such as rape and torture, are also excluded as they have not been consistently documented and counted. However, reports of the activities of Salvadoran security forces indicate that killings typically accompany other kinds of violence, so that it is safe to assume that the level of political killing is a consistent indicator of the level of other kinds of violence.

Socorro Juridico and Tutela Legal collected most of their information in urban areas, as the fluid lines of battle made it difficult for them to take testimony in rural areas on a consistent basis. As a result, their statistics should be assumed to be conservative. In particular, they are likely to understate the numbers of victims of violence in rural areas. For example, Socorro Juridico and Tutela Legal have excluded from their statistics the victims of several massacres that were well documented in the press because they were unable to independently obtain sworn testimony from eyewitnesses.[36]

Because of this under-reporting of violence in rural areas by Socorro Juridico and Tutela Legal, I needed to use other sources to construct an indicator which explicitly accounts for rural violence. To accomplish this task, I used press reports to identify months in which particular incidents of political violence took place in the countryside which might have caused people to leave El Salvador. I then included three separate dichotomous "dummy" variables in my model to account for these violent events. Actions on the part of the security forces thus identified were: 1) the sweeps of the country side in March of 1980 which accompanied the land reform declaration, for which I included a dummy variable called "Reform";[37] 2) the military sweep operations of 5,000 to 6,000 troops which took place in Morazan Department in October of 1980[38] and in Morazan and Chalatenango departments in January and February of 1983, for which I fitted a dummy called "Sweep5";[39] and 3) the much larger military sweeps of more than 10,000 troops that took place in eight departments beginning in December of 1983, for which I fitted a dummy called "Sweep10."[40]

Numerous reports described the action of March 1980 as a massive mobilization of the military in the countryside, resulting in the death or displacement of thousands of people. None of the reports provide any information on the exact numbers of troops involved in this action, however. I therefore represented it with a separate dummy variable. Numerous smaller operations were also reported; however, such operations are regrettably a "normal" condition in El Salvador, and the killings caused by them are to some extent reflected in the Socorro Juridico/Tutela Legal data. I therefore chose to include in the model only particularly large operations.[41]

I fitted dummy variables as well for the major FMLN offensives on the theory that the increased fighting resulting from these actions could displace some civilians and lead to increased migration to the U.S. None of these dummies proved statistically significant, however, so I dropped them from the model. This may have occured because the FMLN does not place a high priority on driving people out of the areas in which it operates, and has tended to conduct its military operations in a hit-and-run fashion, thus having only a temporary impact on areas in which it conducts offensives. A summary of the variables included in the model may be found in Table I.

Americas watch reports that FMLN recruitment drives were responsible for the displacement of some 1500 people in San Miguel department in April and May of 1984. This suggests that the FMLN may become an important cause of displacement and migration. The incidents in San Miguel fall outside of the time bounds of this regression analysis, however, and contributions by the FMLN to displacement and migration prior to this event appear to have been minimal.[42]

In time series analysis, dummy variables are typically assigned values of one for the time periods in which the events they represent took place. In this case, however, the events represented by the dummies are likely to have an effect on the dependent variable over an extended period of time. The length of time that elapses between an incidence of violence and the arrival at the U.S. border of a person fleeing that violence is highly variable. Different people have different degrees of tolerance for violence. Some people who initially intend to stay may decide to leave once others go. Furthermore, according to staff of refugee aid agencies, the length of time it takes Salvadorans to travel to and cross the U.S. border varies from as little as two weeks to roughly three months, depending on the resources of the individual. Poorer people must earn large amounts of money, running in the many hundreds to several thousand

TABLE I

VARIABLE SUMMARY

Variable	Description	Mean	Standard Dev.
SAL	Salvadorans apprehended by I.N.S. within 72 hours of entry into U.S.	768	255
SSAL	As above, seasonally adjusted using ratio to moving average.	762	199
MEX	Mexicans apprehended by I.N.S. within 72 hours of entry into U.S.	61106	17347
SMEX	As above, seasonally adjusted using ratio to moving average.	60675	11584
MURDER	Salvadorans killed by combined security forces as recorded by Socorro Juridico and Tutela Legal.	524	481
SWEEP5K	dummy (dichotomous) variable for military sweeps of 5000 to 6000 men.	.14	.35
SWEEP10K	dummy variable for military sweeps of roughly 10,000 men.	.06	.25
REFORM	dummy variable for military and paramilitary sweeps associated with land reform proclamation.	.06	.25

dollars, either along the way or before they go. Some are forced to walk much of the distance, but even these people need money for bribes and false documents.[43] As a result, even Salvadorans who intend to travel straight through to the United States in many cases end up spending from several weeks to several months in Mexico. In order to account for the delay in the impact of military violence on migration caused by all of these factors, I assigned the three dummy variables values of one not only for the months in which the events they represent took place but also for three months following.

I expected that the murder variable, like the dummies, would need to involve a lag of several months. I found that lags of two, three and four months were each significant predictors of the numbers of Salvadorans apprehended, when combined with Mexican apprehensions and the dummies. Although the variance in the murder variable is very high, (the Pearson correlation coefficient between the level of murder in a given month and its value for the previous month is only +.56) there is sufficient multicollinearity that it is only possible to include two, rather than all three of these lags in a regression equation. If all three are included, lags two and four become insignificant, reflecting the high standard error of estimates caused by multicollinearity. The partial correlations of lags three and four with the dependent variable were the highest, so these two lags were used in the model presented. Unlike the dummy variables, the murder variable is not significant for the first two months (lags zero and one). This is true regardless of whether lags two, three, and/or four are included in the equation, indicating that lags zero and one do not belong in the model.

These findings are consistent with the estimates of travel time provided by interviewees if one assumes that people who decide to leave because of political murders tend to delay their departure. One would expect a difference between people who flee individualized violence and those who flee military sweeps. First, military sweeps are often preceeded by warning, either through FMLN intelligence or intentional warning from the military. People who are forced to flee from sweeps do so promptly, often before the sweep begins. In contrast, people who leave because they have been personally threatened or because someone close to them has been killed (the kind of circumstances reflected by the murder variable) often must go into hiding to prepare for their escape, thus delaying their migration to the U.S. Some lag in the impact of the murder variable on migration is a result of the way these data are collected: killings are often recorded a month or more after the event took place, since witnesses and families of victims must travel to San Salvador to report their losses to Socorro Juridico or Tutela Legal. Both of these organizations have followed a procedure of recording killings in the months in which they were reported, rather than in the months in which the killings took place.[44]

The regression model for the numbers of Salvadorans apprehended includes the Mexican apprehensions control variable, the three dummy variables representing military sweeps, and the murder variable at lags (-3) and (-4). In scalar notation, this model takes the form:

$$SAL=B_0+B_1(MEX)+B_2(SWEEP10)+B_3(SWEEP5)+B_4(REFORM)+$$
$$B_5(MURDER)[-3]+B_6(MURDER)[-4]+e$$

This analysis uses data from January 1979 (the beginning of the Socorro Juridico/Tutela Legal series) through March 1984 (the latest available data from the I.N.S. at this writing). The bounds for the regression were from May 1979 to March 1984, taking into account the four month lag in the murder variable. The statistical results of the model above are presented in Table II.

TABLE II

REGRESSION RESULTS

Variable Name	Coefficient Estimate (Std.Error)	T-Statistic	Beta-Coefficient Final Model	Contribution to corrected R^2
Mexicans	0.0062 (0.0011)	5.68	.42	.28
Murder(-3)	.16321 (.04455)	3.66	.31	.13
Sweep10K	468.37 (75.33)	6.22	.46	.13
Reform	350.17 (73.19)	4.78	.34	.07
Sweep5K	209.30 (51.329)	4.08	.29	.08
Murder(-4)	0.123 (0.044)	2.77	.23	.04

R-Squared	Corrected R-Squared	Durbin-Watson Statistic	
.75	.72	2.03	N=59

NOTE: For purposes of this presentation, regression was step-wise ordinary least squares with the Mexican variable entered first and the remaining variables entered according to their partial correlations with the dependent variable. The Mexican variable must be entered first because it controls in part for possible measurement error in the dependent variable. It should be emphasized that this stepwise procedure was used in order to evaluate the contributions to corrected R^2 of each of the variables, not as a method of choosing regressors.

When seasonally adjusted Salvadoran and Mexican apprehensions data are used in the same model, the overall R^2 of the model is lower, but the contribution to R^2 of the violence variables is *higher* at .56. In other words, indicators of political violence *explain more than half of the variance* in Salvadoran apprehensions. According to these findings, fear of political violence is the *dominant* motive for Salvadoran migration during the period covered by this analysis. Using the seasonally corrected Salvadoran and Mexican apprehensions series, the beta weight of the Mexican variable was only .21, while those of the dummy variables for sweeps of ten thousand troops, sweeps of five thousand troops, and for the agrarian reform period were .49, .39, and .24, respectively. The beta weights for the political murder variable at lags -3 and -4 were .34 and .28 respectively. (See the seasonally adjusted regression results in Table III) The contibution to R^2 and the beta weights of violence

TABLE III
REGRESSION RESULTS USING SEASONALLY ADJUSTED SALVADORAN AND MEXICAN APPREHENSIONS

Variable Name	Coefficient Estimate (Std.Error)	T-Statistic	Beta-Coefficient Final Model	Contribution to corrected R^2
Mexicans (seasonally adjusted)	0.0036 (0.0017)	2.11	.21	.05
Murder(-3)	.13925 (.04455)	3.30	.34	.20
Sweep10K	391.57 (72.95)	5.37	.49	.14
Sweep5K	220.04 (47.552)	4.63	.39	.13
Murder(-4)	0.115 (0.041)	2.79	.28	.03
Reform	194.87 (73.19)	2.75	.24	.05

R-Squared	Corrected R-Squared	Durbin-Watson Statistic	
.65	.61	1.92	N=59

NOTE: As with the first regression results presented in Table II, the results presented here are from step-wise ordinary least squares regression with the Mexican variable entered first and the remaining variables entered according to their partial correlations with the dependent variable. The Mexican variable must be entered first because it controls in part for possible measurement error in the dependent variable.

variables are stronger in the seasonally corrected version of this model because the shared seasonality in the Salvadoran and Mexican variables in the uncorrected model conceals some of the impact of political violence on Salvadoran migration. In other words, some periods of high Salvadoran migration actually attributable to political violence are "explained" in the uncorrected model by the Mexican variable. Readers should compare figures 2 and 3 with figures 4 and 5 to see how this would be so. (Compare also the correlation matrices for the original and the seasonally adjusted series in Appendix I).[45]

The findings constitute strong empirical evidence that political violence in El Salvador contributes in a major way to Salvadoran migration to the U.S. The corrected coefficient of determination (R^2) is .72, meaning that the model as a whole explains 72% of the monthly variation of Salvadoran apprehensions. In a stepwise regression in which the Mexican apprehensions control variable was added first, followed by other variables according to their partial correlations with the dependent variable, the combined contribution to variance explained (R^2) of the political violence variables (Sweep10, Sweep5, Reform, Murder(-3), and Murder(-4)) is 44%. Variance in the numbers of Mexicans apprehended over time (presumed here to account for major variations in INS enforcement and whatever economic factors affect Salvadorans and Mexicans alike) corresponds to or explains only 28% of the variance in Salvadoran apprehensions. The remaining 27% of the variation in Salvadoran apprehensions is presumably attributable to factors not included in the model, the combination of which, based on occular inspection of the residuals, approximates random noise. The standardized regression coefficient (beta weight) for the dummy variable for the 10,000 man sweep operation (.46) is larger than that of the control variable (.42). The other violence variables have beta weights of .31, .34, .29 and .23. Taken together, the political violence variables clearly contribute most of the explanatory power of the model. The violence variables are explaining even more of the actual variation in Salvadoran migration than it appears, since some of the variation explained by the Mexican control variable is measurement error in the dependent variable (variations in enforcement) rather than actual variation in Salvadoran migration.

Among the political violence variables, the dummy variables for military sweep operations, as a group, contribute more to the total variance explained than the two lagged political murder variables together (.27 versus .17 in the uncorrected model, and .32 versus .23 in the seasonally adjusted model). Thus, it appears that military sweeps may outweigh death squad killings as a cause of Salvadoran flight to the U.S. This makes intuitive sense, since the purpose of these military operations is to drive civilians out of areas in which the FMLN operates. Furthermore, larger sweep operations appear to generate more refugees: the coefficient estimate for the dummy variable for 10,000 man sweeps is roughly twice as big as that of the dummy for 5,000 man sweeps. All of the refugee aid workers interviewed for this study reported that proportionally more rural people have been coming to the U.S. since the end of 1983, primarily because of increases in military attacks on their areas. As one interviewee told me, many people who have tolerated three bombings a month for several years finally decided to leave their homes when the frequency of attacks increased to three times a day.[46]

These findings suggest that current U.S. policies in El Salvador may have undesired consequences for the U.S. in terms of increased refugee flows. While the Reagan administration has pursued a successful policy of pressuring the Salvadoran military to reduce death-squad type killings, it has, at the same time, provided sufficient military aid to increase the size of the Salvadoran army from 32,000 to 43,000 between 1983 and 1984.[47] Given the prominance of military operations in generating refugee flows, as demonstrated above, this dual policy of cleaning up and expanding the Salvadoran military may well generate a net increase in the number of refugees coming to the U.S.

Competing Hypotheses:

One possible critique of my overall argument would be that the civil war has undermined the Salvadoran economy and that this economic effect actually intervenes between the political violence represented in my model and the resulting migration to the U.S. It is important to note, however, that most of the fighting in El Salvador has been taking place in areas that are relatively peripheral to the Salvadoran economy as a whole. It is very unlikely, therefore, that performance of the economy fluctuates along with the level of political violence _on a month-to-month basis_. Moreover, to my knowledge there are no monthly indicators of Salvadoran economic performance available. It is therefore difficult to see what proof the administration might use to support its contention that economic factors actually underlie Salvadoran migration to the U.S. Those quarterly series that are available, such as exports, are uncertain indicators of employment opportunities and thus of economic incentives for emigration. Annual indicators of course provide too few observations for time-series regression analysis, especially since the dependent variable -- Salvadoran migration to the U.S. -- has only been measured since 1976, leaving only seven degrees of freedom for a bivariate model.

In the spirit of considering competing hypotheses, I have explored the use of indicators such as exports as predictors of Salvadoran migration, both with and without controls for political violence, and have found no statistically significant relationships. This may of course reflect nothing more than the weakness of the level of exports as a proxy for unemployment. However, the results of the political violence model presented above are sufficiently strong to justify a tentative conclusion that since 1979 economic considerations have had a relatively minor impact on the decisions of Salvadorans to migrate to the U.S.

CONCLUSIONS AND IMPLICATIONS FOR POLICY:

This empirical analysis indicates that fear of political violence is an important and probably the dominant motivation of Salvadorans who have migrated to the United States since the beginning of 1979. The level of political violence in El Salvador is closely associated with the numbers of Salvadorans who come to the U.S. In light of this evidence it would appear that basic humanitarian concern would require that the United States provide Salvadorans with some special protection from deportation. The human suffering caused by fear of deportation alone could be construed to be sufficient reason to provide Salvadorans with some sort of temporary protection.

The United States is a signatory to the 1968 U.N. Protocol Relating to the Status of Refugees, which defines a refugee as a person unable or unwilling to return to his or her country of origin because of persecution or a "well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion..."[48] We are obligated to provide protection from deportation -- "non-refoulement" -- to people fitting this definition. The UNHCR Handbook on Procedures and Criteria for Determining Refugee Status emphasizes that "well founded fear" has both an objective and subjective aspect. If an individual's predominant motive for leaving his or her country is fear, that person should be considered a refugee. In other words, a person's reasons for leaving, whether or not they can be shown to be fully rational in terms of objective individual risk, should weigh heavily in a signatory nation's evaluation of whether a person is a refugee.[49]

The findings of this study provide strong empirical evidence, based on the actual behavior of Salvadorans, that fear of political violence is the predominant motive behind the decisions of Salvadorans to migrate to the U.S. since 1979. In view of these findings, and in the absense of convincing evidence to the contrary, it is the opinion of this analyst that Salvadorans should be granted temporary protection from deportation until such time as further research indicates that the dangers that originally motivated them have passed.

NOTES

[1] Weinraub, Bernard, "U.S. is Condemned on Salvadorans," New York Times, May 21, 1983, p. 5, Col. 1.

Fairly tight quotas and a structured set of preferences apply to normal immigration to the U.S. Special exceptions are provided under the Refugee Act of 1980 allowing people to be admitted to the U.S. if they face persecution in their home countries or the countries in which they habitually reside. The term "refugee" is applied to people outside of the U.S. who convince U.S. officials abroad that they face persecution. Quotas govern the total number of refugees admitted in a given year and in practice refugee status has been granted predominantly to people from Indochina. Central Americans rarely apply for refugee status; the typical pattern is to enter the United States without inspection and apply for political asylum once here.

[2] "Young Male" Salvadoran Documentation Material, National Immigration Project of the National Lawyer's Guild, Boston, Mass., see in particular affidavit of Sandra Gutierrez, November 3, 1981, Redwood City, CA

also, interviews with staff members of organizations providing legal assistance to Central American refugees, selected from among those listed in the Directory of Central American Organizations published by the Central American Resource Center in Austin, Texas. I gave priority to contacting groups in border areas since these people are most likely to have had an opportunity to observe fairly directly the dynamics of the refugee flow from Central America over time. Interviews were conducted by phone, and the number of interviews was constrained primarily by cost. I also interviewed Rose Marie Cummins of Centro Presente in Cambridge, MA, an organization which provides legal and social services to Central Americans in my own local area.

- -Juan Rascon of Central American Refugee Project, Phoenix, AZ, November 26, 1984;
- -Jack Elder of Casa Oscar Romero, San Benito, TX, November 27, 1984;
- -Linton Joaquin of Central American Refugee Center, Los Angeles, CA, November 27, 1984;
- -Claire Shurkowski of Proyecto Libertad, Harlingen, TX, November 29, 1984;
- -Sister Rose Marie Cummins of Centro Presente, Cambridge, MA October 9, 1984;

[3] Lindsey, Robert, "A Flood of Refugees from Salvador Tries to Get Legal Status," New York Times, July 4, 1983, p. 1, Col. 1.

[4] Shenan, Philip, "Salvadoran Refugees in New York Region Struggle for Asylum," New York Times, July 25, 1983, p. 41, col. 5.

[5] Weinraub, Bernard, op. cit. p. 5, Col.1.

[6] Interviews, op. cit.

[7] Aguayo, Sergio, The Central American Exodus, unpublished draft, El Colegio de Mexico, 1984, pp. 2-4, 8-10, 14-17.

[8] Interviews with Clair Shurkowski and Jack Elder, op. cit.

[9] A Nation of Prisoners, Americas Watch Committee, (New York: April, 1984) pp. 1-10.

[10] Fagen, Patricia Weiss, Applying for Political Asylum in New York: Law, Policy and Administrative Practice, New York Research Program in Inter-American Affairs, New York University. Occasional Paper No.41 (April, 1984) p.33

[11] ibid. p. 33

[12] Report on Torture, Amnesty International, New York: Farrar, Straus, Giroux, 1973, 1975. pp. 220-1.

see also Amnesty International Report. Amnesty International, London. Annual: 1975-76 (pp.110-1); 1977 (pp.140-1); 1978 (pp.120-2); 1979 (pp. 61-3).

[13] Solidaridad: Boletin Internacional, Socorro Juridico de Arzobispado de San Salvador, No.40 (May 15, 1983) pp.3-6
reproduced in:
Health and Human Rights in El Salvador. Committee for Health Rights in El Salvador. (New York, July 1983) pp.24-6

[14] Informe Anual 1982, Oficina Tutela Legal del Arzobispado, Comision Arquidiocesana de Justicia Y Paz, San Salvador, cited in Health and Human Rights, op. cit. pp. 27-9

Free Fire: A Report on Human Rights in El Salvador. (Americas Watch Committee and Lawyers Committee for International Human Rights, (New York: August 1984) pp. 3-5

El Salvador: A Gross and Consistent Pattern of Human Rights Abuses. Packet of reports, Amnesty International, (New York: November 1983) pp. 1-2. See also "Assigning Responsibility for Human Rights Abuses: El Salvador's Military and Security Units," which is included in this packet.

The recent drop in death squad activities in El Salvador immediately after U.S. officials placed pressure on the Salvadoran military supports the claims of human rights groups such as Americas Watch and Amnesty International that the death squads and the military share leadership and personnel.

[15] Report on Human Rights in El Salvador, Americas Watch Committee and American Civil Liberties Union, (New York: Random House-Vintage, January 1982) pp.157-61

Free Fire, op. cit. pp.1-46

[16] Third Supplement to the Report on Human Rights in El Salvador, Americas Watch (July 1983) p. 25

[17] Report op. cit. p. 196 See testimony of Reps. Gerry Studds, Barbara Mikulski, and Robert Edgar, U.S. Congress, House Subcommittee on Foreign Operations, Hearings, Foreign Assistance and Related Programs Appropriations for 1982, 97th Congress, 1st Session, February 25, 1981. p. 29. The Salvadoran army officers quoted are not named.

[18] Supplement, op. cit. pp. 117-18, 219

[19] Free Fire, op. cit. pp. 54-9

[20] Latin America Regional Reports: Mexico and Central America (LARM) RM-81-02 (February 1981) p.4

Report on Human Rights, op. cit. pp. 158, 160

[21] El Salvador's Other Vicitms: the War on the Displaced, Lawyers Committee for International Human Rights and Americas Watch Committee, (April 1984) pp.29-31

[22] Fagen, Applying for Asylum. op. cit. p. 38

[23] El Salvador's Other Victims. op. cit. p. 31

[24] LARM, RM-81-05 (5 June, 1981) p.6

Report on Human Rights in El Salvador, op. cit. pp. 166-72

Third Supplement to the Report on Human Rights in El Salvador, Americas Watch Committee and American Civil Liberties Union, (July 19, 1983) pp. 45-7

[25] Salvadorans in the United States -- The Case for Extended Voluntary Departure, National Immigration and Alien Rights Project of the American Civil Liberties Union (Washington, DC: December, 1983) pp. 42-9

LARM, RM-84-02 (17 February, 1984) p.5

[26] see Affidavit of Sandra Gutierrez in National Lawyers Guild "Young Male" case materials op. cit.

[27] "Salvadoran Refugees in New York Region Struggle for Asylum," New York Times, (Monday, July 25, 1983) P. A1 Col.6

28 Aguayo, op. cit. p. 9.

[29] Interviews with Linton Joaquin of Central American Refugee Center in Los Angeles (November 27, 1984), Juan Rascon of Central American Refugee Project in Phoenix (November 26, 1984), Jack Elder of Casa Oscar Romero in San Benito, Texas (November 27, 1984), and Claire Shurkowski of Proyecto Libertad in Harlingen, Texas (November 29, 1984).

[30] "Monthly Report of Deportable Aliens Found in the US by Nationality, Status at Entry" (October 1976 through June 1984) available from Immigration and Naturalization Service, 425 I St. N.W., Washington, DC 20536

[31] Fagen, Applying for Asylum, op. cit. p. 33
Most independent observers consider this INS estimate rather high. Also, many INS apprehensions of Salvadorans take place not at the border but during raids of workplaces although this proportion varies considerably from month to month. Thus the percentage of Salvadoran actually caught at entry is probably much lower than 25%.

[32] Prior to 1982, some Salvadorans were able to enter the US on non-immigrant visas, which they regularly overstayed. Some of these people entered the US by air and other conventional transportation. The vast majority, however, have entered without inspection thoughout the period examined here.

[33] Asman, David, "Behind the Human Rights Tallies," The Wall Street Journal, Feb. 10, 1984 editorial page.

[34] Figures for 1979 through 1981 were taken from the Socorro Juridico tables reproduced in Health and Human Rights, op. cit. Data were unavailable for three months -- October through December of 1979. I used a standard linear interpolation to fill these missing observations. This is a reasonable procedure in this case because the level of death squad violence showed only moderate variance during the first 9 months of 1979. (See Figure 1 in the test.) Figures for 1982 forward come from the five supplements to the Americas Watch/ACLU Report on Human Rights, op. cit. These are available from the Americas Watch Committee, 36 West 44th St., New York, NY 10036 (The second supplement is out of print.)

[35] Supplement to the Report on Human Rights in El Salvador, Americas Watch Committee (July 1982) pp. 12-3

[36] ibid. p.13

US Reporting on Human Rights: Methodology at Odds with Knowledge, Americas Watch Committee (June, 1982) p. 18

Free Fire, op. cit. pp. 1-46

Supplement. op. cit. pp. 106-7

[37] Latin America Weekly Report (LAWR), WR-80-07 (21 March, 1980) p. 12

LAWR, WR-80-13 (28 March, 1980) p. 1

LAWR, WR-80-32 (15 August, 1980) p. 8

Report on Human Rights, op. cit. p. 157-60

[38] LAWR, WR-80-42 (24 October, 1980) p. 1

LAWR, WR-80-44 (7 November, 1980) p. 2

[39] LAWR, WR-83-04 (21 January, 1983) p.12

LAWR, WR-83-04 (28 January, 1983) p. 6

LAWR, WR-83-05 (4 February, 1983) p. 6, p. 11

[40] LAWR, WR-84-01 (6 January, 1984) p. 4

[41] Another incident which I excluded from the model was an operation of about 5000 men near the Chinchontepec volcano in San Vicente department in June 1980. This so-called "hearts and minds" operation was designed to clear an area for immediate settlement of 30,000 previously displaced people. See LAWR, WR-83-24 (24 June, 1980) p. 4. I judged therefore that it was unlikely to have generated net out-migration in the same way that other military operations do.

[42] Free Fire, op. cit. pp.54-7 According to State Department estimates, which can be expected to be biased upwards, 10,000 to 15,000 people have fled into Honduras to escape FMLN recruiting drives. This should be compared to the hundreds of thousands displaced by security forces operations. (see p.3)

One interviewee reported that he had noted an increase in the flow of Salvadoran migrants immediately before and after the May 1984 elections in El Salvador. He surmised that people feared that violence would increase during the months leading up to the election or following the election, and left as a result. This suggested that some sort of variable should be included to account for considerations of politica climate. Unfortunately, the May 1984 election, like the FMLN recruitment drives, falls just outside the time bounds for data available from the INS. In any case, the 1984 elections were preceeded by a major episode of military violence which is accounted for by a dummy variable in my model. I saw no way of distinguishing between the impact of this violence on migration and that of stricly political events, since the two effectively coincided and can both be measured only in a qualitative way using dummy variables. To what extent the sweeps of January and February were related to the upcoming elections I can only speculate. This major increase in military violence probably outweighted whatever impact considerations of political climate had in terms of motivating people to leave. As a test to see whether a variable for political events should be included in the model, I fitted a dummy variable for the elections held in late March 1982. It proved statistically insignificant. I would conclude that political tension surrounding both of these elections has resulted in increased migration only to the extent that such tension was expressed in terms of violence.

[43] Interviews, op. cit. note 21. All of the people interviewed had dealt with hundreds of Salvadoran clients, and all estimated travel time at between 2 weeks and three months.

[44] Free Fire, op. cit. p. 2

[45] Estimation was done using Micro-TSP, verified with SPSS and TROLL. The Durbin-Watson statistic for the regression was 2.03, indicating very little probability of first order serial autocorrelation in the error process. I also checked for a second order autocorrelation process and found no evidence of one. Scatter plots of the residuals against each independent variable appeared homoscedastic.

To address the apparent seasonality of Mexican and Salvadoran apprehensions, I ran the model with a seasonal adjustment of these two series. Adjustment was done with the ratio to moving average technique for both series from October 1976 through March 1984. The results of the regressions on the adjusted series (presented in Table

III) are consistent with the findings obtained without the seasonal correction. I also ran the model with the Mexican series seasonally adjusted and the Salvadoran series in its original form. The parameter estimates, contributions to R^2 and beta weights of the variables were all in line with other findings, but the model demonstrated a first order moving average process, probably the result of artifactual seasonality in the Salvadoran series not "explained" in the regression by the adjusted Mexican variable.

Given the long and multiple lags involved in all of these versions of the model, they should ideally be estimated using a polynomial distributed lag technique. I chose not to present them in this way in the body of the paper because of the difficulty of interpreting and reporting the coefficient estimates obtained with such a model. I did however estimate the non-seasonally corrected version of the model with polynomial distributed lags substituted for the extended dummy variables and for the multiple lags of the murder variable. This approach avoids the problem of multicollinearity in the murder variable. The results are striking: the corrected R^2 is .80, the Durbin Watson Statistic=2.16, and the combined contibution to R^2 of the distributed lags of the violence variables is .52. The individual contributions to R^2 and beta weights of the distributed lags of the variables were comparable to the model presented in the text. In estimating this distributed lag model, I assumed second order polynomials over a lag period of four months with no imposed endpoint constraints. The shape of the polynomials obtained was consistent with the assumptions made in the text that sweeps generate prompt increases in migration, while political murder generate increases that peak in the third month and then drop off. Results of these regressions are available from the author on request.

[46] Interview with Jack Elder op. cit.

[47] *LARM* RM-84-05 8 June, 1984, p. 5 These figures originate with an Institute of International Stategic Studies *Stategic Survey*.

[48] Masanz, Sharon, "Asylum Adjudications," unpublished draft report, Congressional Research Service, Library of Congress, Washington, D.C. March 9, 1983, pp. 3-4.

[49] *Handbook on Procedures and Criteria for Determining Refugee Status*, UNHCR, (Geneva: 1979) pp. 10-25, 45-51.

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APPENDIX I

CORRELATION COEFFICIENTS

	SAL	MEX	MUR -3	MUR -4	SWEEPS 5K	SWEEPS 10K	REFORM
SAL	1.0						
MEX	.54	1.0					
MUR(-3)	.33	-.08	1.0				
MUR(-4)	.30	-.03	.56	1.0			
SWEEPS5	.27	.14	.03	.003	1.0		
SWEEPS10	.47	.27	-.08	-.07	-.11	1.0	
REFORM	.18	-.02	-.14	-.18	-.11	-.07	1.0

CORRELATION COEFFICIENTS -- WITH SEASONAL ADJUSTMENT OF SALVADORAN AND MEXICAN APPREHENSIONS

	SSAL	SMEX	MUR -3	MUR -4	SWEEPS 5K	SWEEPS 10K	REFORM
SSAL	1.0						
SMEX	.25	1.0					
MUR(-3)	.38	-.27	1.0				
MUR(-4)	.35	-.19	.56	1.0			
SWEEPS5	.35	.14	.03	.003	1.0		
SWEEPS10	.47	.39	-.08	-.07	-.11	1.0	
REFORM	.014	-.25	-.14	-.18	-.11	-.07	1.0

Mr. **Henderson**. Thank you very much. We are here, of course, to discuss the deportation of Salvadoran nationals to El Salvador and S. 377 which calls for a temporary suspension of deportation of those nationals from the United States.

America's immigration and refugee policies indeed have become the subject of passionate debate in recent years. However, few issues within the immigration debate have generated more concern and compassion than the growing number of Salvadoran nationals here in the United States. The ACLU believes that it is urgent to seek to develop a national consensus on legislation which will in fact deal with the problem of millions of undocumented workers in the United States and which does so in a way which is consistent with our national commitment to equal protection, nondiscrimination, and respect for human and civil rights.

But we also believe that the importance of lawful options for refugee protection and a firm commitment to the protection of internationally recognized human rights must not be diminished in the desire for immigration reform and control. The human rights abuses and the human rights situation remain a central issue in El Salvador. By all accounts El Salvador is wracked by a civil war characterized by a startling degree of danger and brutality.

The principal victims of this civil war are innocent civilians, and reliable estimates of the number of civilians killed, range from 40,000 to 50,000 persons since 1979.

The documentation of the severity of the human rights situation in El Salvador is thorough, credible, and extensive. Amnesty International, the U.N. High Commissioner for Refugees, Americas Watch, the Lawyers Committee for International Human Rights, and our own State Department, have documented the random violence which characterizes life in El Salvador.

In the Country Report on Human Rights Practices for 1984, Elliott Abrams, our own Assistant Secretary, remarks that:

> Human rights conditions in El Salvador are strongly affected by the ongoing civil strife. The achievement of a stable, public order sufficient to protect individual rights has been disrupted by guerrilla and military operations, partisan hatreds, acts of revenge, fear, and a prevailing uncertainty characterized by violence. This situation contributes to and is complicated by the ineffective operation of the judicial system caused in part by corruption and intimidation.

We think it only fair to note that indeed there has been a decline in some kinds of human rights abuses, notably death squad killings and disappearances, in large part because of U.S. pressure.

On the other hand, the indiscriminate killing of civilians in guerrilla controlled zones of El Salvador has continued. Last week, for example, the Washington Post reported the execution style death of 29 civilians, including several children, in what was believed to be a stepped up campaign of terror by the opposition.

We think it is obvious beyond dispute that the extent of violence is severe in El Salvador and that it is both randomly and specifically directed against the civilian population there.

The current administration has a policy of deporting Salvadorans to El Salvador unless they can meet the stringent standards of proof necessary to obtain political asylum in the United States. Fewer than 1,000 Salvadorans have been granted asylum since 1980, while approximately 25,000 were sent back to El Salvador during the same time period. Many more thousands have had their applications for asylum denied and are likely soon to receive final deportation orders.

The administration defends the criteria it has applied for asylum as necessarily strict and states that they are in compliance with international standards established by the U.N. Protocol Relating to the Status of Refugees.

We think, however, that the Refugee Act of 1980, does not speak to the question of standards to be applied in determining when in emergency situations, foreign nationals in the United States, are entitled to the special relief of extended voluntary departure.

It is of course clear, that when Congress enacted the Refugee Act it did not seek to in any way abrogate "extended voluntary departure," which is a discretionary status controlled by the Attorney General.

Now, the administration argues that Salvadorans who do not qualify individually for asylum have nothing to be afraid of and may be safely returned to El Salvador.

I see that my time is up, and I should, if I can, summarize by making two observations.

Senator SIMPSON. Please.

Mr. HENDERSON. First, Mr. Abrams this morning singled out for special attention the ACLU study which sought to examine the fates of deportees returned to El Salvador. The testimony, I think, amply speaks to both the nature of our study, how it was constructed, and how it was carried out. I think it should be understood from the outset that we never sought to establish a definitive study of what happened to person who indeed were returned. We sought only to identify possible linkages between the violence in El Salvador and the fates of deportees.

We have identified from public records about five examples, which are included in the appendices to our report, "Salvadorans In the United States." An additional 112 cases were established from a fairly exhaustive computer match that was born in part from evidence obtained under the Freedom of Information Act, after we were unable to obtain the cooperation of the Government to get that information directly.

The last point that I would mention involves the apprehension records that the Immigration Service has prepared, which points to the number of Salvadorans who have been apprehended and deported. You will note that even though there has been a fairly substantial increase in apprehensions, we point to the fact that the 300,000 to 500,000 Salvadorans who are already here in the United States is some indication that no matter how aggressive our Immigration Service has been there is a growing underclass of Salvadorans.

We submitted as attachment III in our testimony a recent study prepared by doctoral candidate, William Stanley, at the Massachusetts Institute of Technology. The MIT study seeks to correlate migration patterns from El Salvador and political violence in that country. And the conclusion of that study establishes fairly specifically that there was a direct correlation between the significant migration of Salvadorans to the United States and the increase in political violence during that same period. Thank you very much, and I would be happy to answer questions.

Senator SIMPSON. Thank you, Mr. Henderson. Let me note that I will incorporate by reference your report, since it is already printed, saving the committee a good deal of its costs. So that will be incorporated by reference.

Let me inquire of Mr. Myers before I get to Mr. Henderson. You speak of the tragedy that has gone on in that country—the killing of parents and decapitation and mutilation, and those things indeed took place. I assume that you are referring more to the situation in El Salvador 2 or 3 years ago.

Would you not agree that the situation is much different in that country today, that the type of death squad violence you described is much reduced today and continues to decline?

Mr. MYERS. First of all, I failed to ask that my statement be incorporated into the record. I would ask that that be done.

Senator SIMPSON. Without objection.

Mr. MYERS. And, second, with regard to your specific question, while it is true that statistically the violence in El Salvador has declined, the picture that we witness emerging is one in which the violence has become more widespread; in other words, has extended to parts of the country that were previously, relatively untouched by the violence.

Whereas 6 months or 1 year ago the guerrilla activities were confined to the north and the death squad activities were confined to the cities, the picture that we find now has new fronts opening up by the guerrillas; the guerrillas extended their activities to the urban areas, such that there is virtually no section of the country now, that is untouched by the civil war that is going on.

Senator SIMPSON. Given the history, I think admitted by all, of a traditional flow of undocumented Salvadorans to the United States, would it not be likely that the granting of suspension of deportation would very surely increase that flow?

Mr. MYERS. It may or it may not. There is no way of knowing for certain what the product will be of a grant of extended voluntary departure or suspension of deportation. Let me note, however, as I noted in my opening remarks, that studies show that the vast majority of the Salvadorans in the country currently have come since the start of the civil war in El Salvador. So the migration, I think, is more directly related to the civil war than anything else.

I would also like to remark with respect to the Nicaraguan grant of extended voluntary departure, I think some misstatements perhaps may have been made by the earlier panel with regard to that because we have tried on repeated occasions to obtain statistics on the Nicaraguan grant to try to find out how many people were lured in, perhaps, by the grant and how many people upon the cessation of the grant actually returned to Nicaragua.

And we have been informed repeatedly that the Immigration Service simply does not have those statistics. So, there are no real statistics available, upon which to make such a statement.

Mr. HENDERSON. Senator Simpson, may I just add a point on that question?

Senator SIMPSON. Yes.

Mr. **Henderson**. It is very difficult to assess the migration flow from Salvador. But it was not until 1976, that the Immigration Service began documenting Salvadoran apprehensions on a nationality-specific basis. A U.S. Census Bureau study, done in 1984 assessing migration flows up to 1980, suggested that in the 1980 census there were only 94,000 Salvadorans estimated to be here in the United States, of whom some 51,000 were thought to be undocumented. We currently have estimated between 300,000 and 500,000 Salvadorans; again, most who came in between the period of 1980 and 1985.

The study that I referred to earlier from the Massachusetts Institute of Technology correlates that flow directly to the political violence of El Salvador during that period.

Senator **Simpson**. One other question of Mr. Myers: There are UNHCR-operated refugee camps for Salvadorans in Honduras which are open to all of those who seek haven; that is what is there. Salvadorans then must cross literally hundreds of miles and cross at least two countries to reach the United States, and Canada does, of course, apparently, accept some Salvadorans.

Would it not appear, therefore, that economic improvement is a principal motivation for the Salvadorans coming to the United States in view of that very basic fact?

Mr. **Myers**. Well, I think the UNHCR would be one of the first organizations to admit the protection and assistance difficulties that they have had with regard to the refugees who are in Honduras. And there are also significant problems in southern Mexico.

When I was in the region in December, just to cite one example, the UNHCR was noting some of the problems that the protection officers there were having with local military forces where refugees were being fired at, where refugees were disappearing in the area.

So, given the hostility that is demonstrated toward the presence of the refugees in those countries, the assistance problems, the fact that they have to be sequestered in camps, I think it is no small wonder that refugees would look for more secure places to go; namely, the United States.

Senator **Simpson**. Let me ask you a final question because you state in your testimony, I believe your phrase was "outrage," which is very common with everything I deal with in this subcommittee; in some form it has to do with outrage, or as I have said before, guilt, fear, emotion, racism. But outrage is one that they use in substantial amount.

Mr. **Myers**. To outrageous proportions.

Senator **Simpson**. An outrageous use of the word outrageous, yes, that is it. The outrage which you feel over the fact that our country—and this is a quote—"returns 300 to 400 Salvadorans monthly to El Salvador should come as no surprise."

Then I must ask, do you also feel that same sense of outrage over the fact that 2,257 Salvadorans have voluntarily returned from UNHCR camps in Honduras to their homeland in the year 1984?

Mr. **Myers**. Well, the number who have applied for voluntary repatriation through the UNHCR I believe is much smaller than that. I do not have the precise statistics, but I can get them for the record, if you wish.

But one thing that I found when I was in the region in December was that while a number of Salvadorans returned from Honduras to El Salvador, that because of the increased military activity on the Salvadoran side of the border, about 1,000 of them had just recently come back to Honduras. So there was a repeat migration there.

Senator SIMPSON. Did you have questions you wished to ask Mr. Myers? I was going to ask a few questions of Mr. Henderson and then go right to you, if you wish.

Senator DECONCINI. That is fine.

Senator SIMPSON. So I do have some other questions. I will submit those to Mr. Myers.

Mr. Henderson, I think you make a very important contribution to the discussion of the standards for extended voluntary departure in your remarks and your paper. I wonder if you could just sum up briefly your position; exactly when, under what circumstances, in your view, should extended voluntary departure always be granted?

Mr. HENDERSON. The addition of the term "always," of course, makes it problematic to assert a clear standard that has to be applied across the board. We concede from the outset that the whole nature of extended voluntary departure has been a discretionary standard applied by the Attorney General in consultation with the State Department. We believe, nonetheless, that if one examines the 15 cases previously where nationals of countries have been granted that standard and look for common terms that link to show an evolution of a policy, it seems to suggest that where there is civil disturbance, where there is an inability on the part of the Government to not provide basic protection to internationally recognized human rights, either through the enforcement of a judicial system or through a restraint on the military or through providing protection against guerrilla activity, that such circumstances would provide a very compelling case for extended voluntary departure.

We think if you examine circumstances like the Polish situation or the Nicaraguan situation previously and contrast that directly with what is going on in El Salvador today, it seems to suggest that a more compelling case could be made out for the Salvadoran national than has been done previously with other nationals who have gotten that protection.

Now, Mr. Abrams mentioned this morning an additional criterion which has heretofore never been factored into the analysis, and that is the proximity of the United States to the country that would be the recipient of the extended voluntary departure status. Obviously, there is a concern about mass refugee flows, and that was implicit in the analysis that he provided.

That has never been a criterion that has been applied. And we recognize that it may pose some unique and new problems that have to be addressed from an immigration policy standpoint, but we think even there it makes sense to consider that consistent with what Senator DeConcini had said earlier and the thrust of his questions.

The reality is that if the Immigration Service begins now to identify and potentially register Salvadorans here in the United States, there is a far greater likelihood that persons can be repatriated when the situation permits their safe return in contrast to the current circumstance, where people are becoming rapidly a part of the underground economy and the underground migration flows. And that certainly does not contribute to an orderly repatriation.

Senator SIMPSON. I am going to run short. I have been advised that I have to open the Senate at 12 a.m. under my new duties. I never know when that is going to come. So I do want to certainly personally be here. I am just offended when we have hearings and are unable to be personally present.

I have some other significant questions, but I want to give Senator DeConcini an opportunity to do that. But let me ask one other. We are dealing with a very small country with a population of 5 million human beings. Ten percent of that population, then, is in the United States of America. I think we want to keep it in perspective as to what we are referring to here. Both of you state that S. 377 would only stop 300 to 400 deportations per month; in fact it would effectively bar us from deporting any of the 500,000 Salvadorans here illegally.

To use a figure of 2 million human beings of illegal status in the United States is using a Census Bureau figure which was contradicted by at least by 3 years of effort by the Select Commission on Immigration and Refugee Policy of which I was a member and so was Senator DeConcini, that there were 3.5 to 6 million illegal aliens here. And all experts have indicated that there are many more than that, I think especially in these latter years, since we were apprehending at our border 1,200,000 last year. And we perhaps apprehend one out of two actually doing it, and they are from 92 different nations in the last flow.

But this is the issue, and yet we are annunciating a policy which will apparently apply wherever there are cases of severe civil unrest in the world. It is not difficult for me at least to see this same rationale for EVD to El Salvador applied in the case of Northern Ireland, for example, or Lebanon or Iran or Iraq or wherever there may be revolution or turmoil or war in the future. We do have a few going in the world today.

I do not indicate that those are not serious situations, and we must treat them just as seriously.

But I am wondering if there is any situation involved in what you described—and what you quoted was "widespread fighting, destruction, and breakdown of public services and order,"—where you would not support the grant of extended voluntary departure?

Mr. HENDERSON. Senator, let me speak to that briefly. I think that with respect to the Salvadoran case example, the request for extended voluntary departure has gone through a number of considerations beginning first in 1981 with a call by Amnesty International for extended voluntary departure to Salvadorans.

There have been numerous attempts by the Congress to address that issue in an orderly and reasonable fashion, the most recent example, of course, being S. 377. The 1984 State Department authorization bill does contain a "sense of the Congress," resolution which the President signed urging that Salvadoran nationals be given extended voluntary departure. What we are suggesting is that where consensus as to the human rights situation exists—and I think in the Salvadoran situation, regardless of differences as to the nature of the conflict, there does seem to be a consensus that the human rights situation is greatly destabilized.

Where that kind of consensus exists and where merely enforcing the current immigration laws does not guarantee ultimately addressing the problem that you yourself identified; the number of Salvadorans in the United States is growing. It continues to grow. And the direct enforcement of immigration laws has had no impact whatsoever on diminishing the size of that population. This is an example of something that permits the development of a political consensus on how to address a problem that we all agree is a growing and significant problem.

That is different from trying to mandate in every specific instance where extended voluntary departure would be applied directly across the board. This bill sought, I think—and this is my last comment—not to legislate EVD, but rather to provide a temporary suspension of the deportation of Salvadoran nationals.

Now, it may be de facto the same thing. But it has still sought to protect the discretion of the Attorney General to make that decision.

Senator SIMPSON. I might just add—and then we will go to Senator DeConcini—that the resolution you speak of came through the appropriations process and not through the committee process, and that in the conference committee on the Simpson-Mazzoli bill, EVD for El Salvadorans was removed. Senator DeConcini.

Senator DECONCINI. Mr. Chairman, realizing our time constraints here, let me just first go back to Mr. Henderson. I was not quite clear, Wade, as you made reference to 112 people whose names came up on a computer that is an appendix to your statement; were these people who were identified or were not able to be found or were identified to be either missing or having been killed? Can you make an explanation of that, please?

Mr. HENDERSON. Yes, I can, Senator. If it is all right, though, I would like to ask Carol Wolchok to respond.

Senator DECONCINI. Please, Carol, would you mind explaining that to me for the record.

Ms. WOLCHOK. Certainly. We have in our office a documentation center that has records of about 30,000 to 35,000 human rights incidents in El Salvador. It is interesting to note that in more than 15,000 of those incidents we do not have the names of the individuals who were killed or whose bodies were found. We only have the names of about 15,000 individuals.

We went through the records in our office with the assistance of a Kay-Pro computer and tried to match the information regarding persons who are victims of human rights abuse with information we had about people deported. What we found was that in 12 cases, almost 12 cases there was some information of human rights abuse to people who had been deported.

We have no information regarding the other 8,500 people whose names we received from the INS that were deported.

Senator DECONCINI. Because you could not find them.

Ms. WOLCHOK. We have no information. We do not know if they are dead, if they are alive, if they are in camps. We do not know anything about their welfare.

Senator **DeConcini**. You cannot make any assumptions from that, obviously.

Ms. **Wolchok**. No, we cannot; we are just two people on Capitol Hill. We do not have an ACLU chapter in El Salvador.

Senator **DeConcini**. Thank you. Mr. Myers, the administration has argued that there is no need for the suspension of deportation because there is adequate safe havens in El Salvador and Central American countries. Now, you touched on this in response to Senator Simpson's question. Are there safe havens anyplace there that you know of in El Salvador itself or Central America for these people?

Mr. **Myers**. The kind of safe haven in El Salvador that may be available to people is not exactly the kind of situation to which we would wish to deport people. You described earlier some of the camps, for example, that you saw when you were in El Salvador and people who are sequestered in church facilities. That is certainly not a condition to which we would wish to deport people.

In Honduras and in Mexico itself, there have been a number of incidents that have been reported even in the past year, as I indicated earlier, in which refugees themselves have been shot or otherwise disappeared or harmed. There is an interesting story in Refugees magazine, a UNHCR publication, this past month of the experience of what they call a roving protection officer along the border who physically had to stand between military forces and refugees who were seeking protection because of the gunfire that was being aimed at them.

So given these experiences I think it is safe to say while there are genuine efforts to provide for protection and assistance for refugees, it is just not always possible, given the circumstances in that region.

Senator **DeConcini**. Mr. Myers, critics of this legislation before us today, S. 377, say that those who are supporting a suspension of deportation for Salvadorans are merely critical of the Reagan administration, trying to make political points, and do not really care about the individual Salvadorans involved.

What do you think motivates the church people that you represent, who are involved in this issue?

Mr. **Myers**. I cannot speak for all church people, and certainly there are those who attempt in the process of assisting refugees also to make statements about policy. That is fairly clear.

But I think for the most part, particularly those working with Church World Service, there is an effort to provide assistance and legal protection for refugees who are here. As for the point about making some larger political comment generally about the situation, we have never in our statements made any reference to the political situation.

And it is also interesting to note that President Duarte himself, when he has visited this country and has been covered by the U.S. press, is found as describing his own country as being one in which there is a culture of terror. And he himself has urged that more sympathy be shown toward the people who are fleeing his country in search of protection.

So I do not think, given the fact that the violence in El Salvador is from both the right and the left, that it needs to be a political statement. It would seem that often those who would wish not to support your bill, Senator, often try to make it into a political statement. But this does not need to be the case.

Senator DECONCINI. Mr. Henderson, your comment regarding characteristics of this bill, I appreciate you underscoring that, because I do not want the record to miss out that this is temporary, that we have set no criteria; we legislatively, purposefully did not do that, that we are confused. This Senator is. Is there really intimidation, violence and persecution by sending people back? And nobody seems to be very certain, other than their own inner beliefs, including your fine organization.

This legislation, Mr. Chairman, would only ask that an independent study be commenced and that the deportation be set aside during that period of time.

Mr. Chairman, I have a number of questions here. I will submit them to the record due to the time constraints. I thank the chairman.

Senator SIMPSON. I thank you very much, and I thank you very much, Wade Henderson and Michael Myers, for your testimony. It is very helpful to us in trying to resolve this matter. Thank you very much.

ACLU RESPONSES TO QUESTIONS BY SENATOR DENTON REGARDING S. 377

1. Do you believe that EVD should be granted to all Salvadorans regardless of their purpose for coming to the U.S.?

A: Motivation for coming to the U.S. is not and has never been a criteria for granting EVD nor for granting asylum when the other criteria are met. Similarlry, motivation for coming to the U.S. is not a proper consideration for granting voluntary departure under sec. 244(e) of the INA. Motivation for migration, although irrevelant to consideration of EVD, cannot be determined without a case by case adjudication. In the case of Salvadorans, an MIT study (Attachment III, ACLU Testimony has demonstrated empirically that Salvdorans come because of a fear of violence and their entry to the U.S is correlated to violence in El Salvador. It is important to note, however, that S. 377 does not provide a blanket EVD for all Salvadorans. The temporary suspension of deporation of Salvadorans called for by S. 377 is governed by the same exclusion criteria in the INA which determine refugee admissions. Moreover, its duration is a function of congressional determination based on findings of the GAO study called for by the bill.

2. Do you think EVD should be granted to all Nicaraguans entering the U.S.?

A: EVD is not granted to persons coming to the U.S., but is an assurance that persons already in the United States will not be deported until it is safe for them to return to their homelands.

The ACLU does not have a position on a grant for EVD for Nicaraguans presently in the U.S. However, we will point out that Nicaraguans previously enjoyed EVD status during the period of heavy fighting that country between 1979 - 1980. The reasons given for that grant by the INS was "due to unsettled conditions in Nicaragua"; "unstable conditions currently existing there". We also will point out that the record developed in favor of granting Salvadorans EVD is extensive, while such a record has not been developed in the case of Nicaragua.

3. Can you identify 10 Salvadorans, of the 5000 that were deported in 1984, who were physically harmed as a result of political violence upon their return to El Salvador?

A: The only study tracing consequences to persons deported in 1984 is that conducted by the Department of State last year. That study showed that 2 persons of 222 traced were dead within six months of their return. Although harm was not reported for the other 220 tracked, this is not conclusive evidence that their welfare has been established. Another 260 persons in that study could not be located, 78 of whom reportedly lived in areas that the State Department said were "too dangerous to travel to". If this sampling is representative, ie. if 2 of every 220 deported persons are dead within six months of their return, then more than 30 persons of 5000 deportees may be deceased.

Let us point out that never has EVD been granted on the basis of whether of not deported persons have been killed upon their return. The appropriate criteria is whether general violence or other conditions in the country makes existance there dangerous to the general population, including deportees. By every known measure, El Salvador is a country in which the public is endangered by both targeted and random violence -- a country in which no person's safety is assured.

ACLU RESPONSES TO QUESTIONS BY SENATOR ALAN SIMPSON REGARDING S. 377

1. You indicate that an ACLU study matching lists containing names of deported Salvadorans and names of murdered Salvadorans "112 likely cases of persecution, 52 of which were political murders." However, a closer reading of your September 5, 1984, memo -- submitted for the record -- states that a "preliminary comparison" found that 52 identified individuals seem to have been killed". What is a "preliminary study" and wht does the phrase "seem to have been killed" mean?

A: The testimony and September 5, 1984, reports are consistent. There is no doubt that the 52 persons whose deaths were reported are dead. We are based in Washington, D.C.: we do not have the resources nor personnel, (and it would be too dangerous) to determine in each cases if the person reported killed was without doubt the same individual deported, even though there is evidence to believe they are identical.

The Department of State, and Senate subcommittte on Immigration and Refugee policy were given the full information regarding these individuals. The Deparment of State, if it chose, could do a follow-up study to determine conclusively that these killed individuals are the same as the deported persons.

We also reported that 47 persons were "disappeared". "Disappeared" is a term of art: the persons were witnesed being abducted; never have been reported detained in any prison or other facility; and have never been seen alive again. It is likely that these persons we've identified as "disappeared" are also dead.

The GAO could be a proper body to conduct a follow-up, as proposed in the legislation.

2. Regarding the name-matching study, you state that "we set out only to raise sufficient questitions and doubts to justify suspending deportations until a definitive study was done. We believe we have done that." However, Maria Boza, coordinator of the project, testified under oath in the Orantes-Hernandez case that the ACLU abandoned the project because it was not capable of making a positive match. Why given this statement, do you believe that the ACLU study has sufficient questions?

A: Ms. Boza's response, in a deposition taken April 11, 1984, was misinterpreted. The ACLU did not abandon its study. As reported, we took the study we began to its conclusion. We do not have, for example, an exhaustive list of everyone who has been a victim of political violence in El Salvador. We had records of less than a third of the victims of political persecution. Similarly, we do not have lists of everyone deported or expelled from the United States to El Salvador. We received less than a quarter of those names, and the list grows by hundreds each month. Therefore, we have never presented our study and list of persecuted deportees to be a complete list of all those persecuted after deportation; and, we do not continue to track each person deported because we do not have the necessary information or resources. Furthermore, we believe this responsibility lies with an appropriate government agency. For these reasons, we state, and repeat, that "we set out only to raise sufficient questions and doubts to justify suspending deportations until a definitive study was done."

ACLU RESPONSES TO QUESTIONS FOR THE RECORD
S. 377

1) ICM currently offers assistance to all returned Salvadorans upon their arrival at the airport in San Salvador. Between December of 1984 and February of 1985, ICM met 794 people, 688 of whom were male, 624 single, and 716 over the age of 18 -- ie., the classic demographic profile of an illegal, economic migrant. Previous studies of illegal aliens (North/Houston, 1976), have shown apprehended aliens to be a reasonably representative sample group. If Salvadorans are truly fleeing "a civil war characterized by a startling degree of danger and brutality," why are the young men leaving and the women and children being left at home?

A: We have not seen any results of the ICM study and therefore cannot comment upon it; nor can the North/Houston study (1976) is not applicable to migrtion from El Salvador since the onset of the civil war in 1979. . Nonetheless, we do have evidence that confirms the impressions of attorneys and social service agencies thoughout this nation that the Salvadorans who are here have come because of fear of the violence in El Salvador (see, Attachments II and III, ACLU Testimony).

Studies of human rights violations in El Salvador demonstrate that the young male population has suffered the largest numbers of political persecution and highest proportion of politcal violence. Thus, young men would be the likeliest to flee the violence and the likeliest to be deported.

2) You indicate in your testimony that you "are strongly committed to the rule of law, and are concerned by the discriminatory application of legal standards, particularly in the refugee context..." However, does not S. 377, which you support and which grants relief only to nationals of El Salvador, perfectly represent a proposed legal standard that would discriminate in favor of one country?

A: S.377 is designed to remedy the discriminatory application of the Extended Voluntary Departure policy. Although the bill grants relief only to Salvadorans, this legislation would be wholly unnecessary if the Attorney General were to grant EVD to Salvadorans under the same criteria that EVD is now granted to Poles, Afghanis, BEthiopians, and Ugandans.

Protection of civilians fleeing armed hostilities is appropriate under the Geneva Conventions and the Refugee Act of 1980. Non-refoulement is prohibited under those conventions and their repatriation is inappropriate until hostilities cease. As EVD has not been invoked administratively, Congress has both the authority and duty to act to ensure equal protection of our laws to Salvadorans.

3. Attachment II to your report "The Fates of Salvadorans Expelled from the United States, " describes a study in which the names of 8,500 Salvadoran deportees were compared with the names of 22,000 victims of human rights abuses. In this study 112 cases of "likely" persecution are alleged, yet only 25 cases are considered a better than average possibility of a match. That number constitutes one third of one percent of the total. Can such a statistical figure justify suspending the deportation of every Salvadoran illegally in the United States?

A: The suspension of deportation of Salvadorans called for in S. 377 is not predicated on the results of the ACLU study. The basis of S. 377 can be found in the quantum of documentation on the human rights situation in El Salvador since 1979, coupled with the use of EVD by successive administrations over the last twenty-five years.

We have noted previously that the cases identified by the ACLU computer match are not exhaustive. We have no information establishing the welfare of the other 8,400 deportees in our study. However, we do have concrete proof of other instances of political persecution after deportation which have come to our attention by other means. This is a minimum number which buttresses our position that the deportations should be halted and a more comprehensive study is undertaken.

4. You indicate in your testimony that " five cases of death or disappearance were established from public record sources and are documented in Appendix III of the ACLU Public Policy Report, Salvadorans in the United States: the Cases for Extended Voluntary Departure." Further investigation of the cases by the State Department has revealed the following information: Santana Chirino Amaya was the victim of an unexplained murder in September of 1981; Walter Garcia Ortiz was murdered in November of 1981; Jose Hernandez was unexplainedly murdered in November of 1982, but Tutela Legal refuses to list his case as a human rights violation; Octario Osegueda was killed, along with his brother, in wht a local paper described as a death linked to robbery, in July of 1983; and in January of 1981 Jose Humberto Santacruz Elias was reported presumably dead by an "open letter" published by his grandmother in a newspaper El Diario de Hoy -- a case which upon later examination revealed that the grandmother's I.D. was fraudulen and no records of the alleged victim existed. Thus only three cases appear to be human rights violations, perhaps only two, nd none occurred later than Novembr of 1982. Given that Salvadorans are deported back to a vastly improved human rights situation today -- not to the conditions of 1982 -- are not the three cases merely unfortunate incidents that today are largely irrelevant to the current conditions in El Salvador?

A: No.

We have no information of the State Department study of these cases and would appreciate reviewing their findings before we respond. However, the reports of violence to these men the degree of brutality, mutilation and dismemberment is characteristic of political violence, not of ordinary crime.

The conditions in El Salvador continue to make victims of innocent civilians. Each human rights report released in the last six months acknowledges this. EVD is not based on whether or not persons will be persecuted or have been persecuted upon their deportations, it is granted in view of the totality of the circumstances within a country. Conditions sufficient to warrant a suspension of deportations to El Salvador are definitely in evidence.

5. The UNHCR recorded 2,257 voluntary departures of Salvadorans from Honduran refugee camps back to El Salvador in 1984. This figure is up from 502 in 1983 and 24 in 1982. Does this voluntary repatriation not display that, 1)human rights conditions improved in El Salvador since 1982, and 2) there are a large number of Salvadorans who can safely return to El Salvador without the fear of either political persecution or random violence?

A: The figures cited in this question do not correspond with our information from the UNHCR. The information we have received from the UNHCR shows 2,200 Salvadoran repatriations from 1982 through 1984. Additionally, the UNHCR reports a steady increase in the number of Salvadoran refugees in Honduran refugee camps, as follows: in 1983 there were 16,142 refugees; in 1984, 18,482; and as of March 20, 1985, there were 20,102 Salvadoran refugees in UNHCR camps.

No positive conclusions on the improvement of the human rights situation in El Salvador should be drawn from the number of repatriated Salvadorans. The repatriation may be attributable to a variety of factors, including the announcement by the Honduran government that the refugee camps would be relocated to the interior of Honduras, or the restrictive and insecure conditions of the camps. At minimum, additional documentation would be needed before such sweeping conclusions can be drawn.

6) The U.S. State Department issued over 18,000 visitors visas to Salvadorans during FY 1984, and a large number returned because TACA, the Salvadoran airline has thirteen flights per week from the U.S., carrying a total of 2,600 people each week. Does this not indicate both an ability and willingness of Salvadorans to El Salvador?

A: The factual basis for the question appears to be inaccurate. Our research shows there are only four direct (non-stop) flights to El Salvador each week. All the other flights stop in other countries prior to reaching El Salvador and at least seven flights per week continue on to countries beyond El Salvador. It is incorrect to assume these TACA flights are carrying only Salvadoran passengers back to El Salvador.

The number of visitors visas issued to Salvadorans is not indicative of a willingness to return to El Salvador, but of an interest in maintaining mobility to leave El Salvador if and when necessary. Moreover, it is not uncommon for persons seeking political asylum to enter this country on visitors visas.

We note, additionally, that there are seven direct, non-stop flights to Poland from the U.S. each week, and seven more direct flights per week are scheduled to begin on June 17, 1985. We believe, however, that such factors are irrelevant to whether Poles should continue to receive EVD.

7) You state in your testimony that Congress should pass S.377 to "avoid refoulement and uphold our national committment to the sanctity of human life..." However, the requirement of non-refoulement is squarely met by the U.S.'s accession to the 1967 Protocol Relating to the Sttus of Refugees. The Supreme Court in INS v. Stevic found that the Refugee Act of 1980 completely fulfilled our international obligations under the 1967 Protocol. Why is S. 377 necessary to avoid refoulment if the Refugee Act already does so?

A: The Refugee Act is not the only international instrument which addresses our obligations to protect human life and avoid refoulment. The Geneva Conventions in particular, make clear that persons fleeing armed conflict in which civilians are victims of hostiliites are to be protected until hostilities cease (see U.N. Handbook).

The Stevic case addressed the standard applied in cases for withholding of deportation under Sec. 243(h) of the Immigration and Nationality Act. While the court may have found that the Refugee Act was intended to fulfill our obligations under the U.S. Protocol, the Court did not address whether the application of the Protocol was in fact fair and nondiscriminatory.

The question of whether the deportations of Salvadoran nationals violates the Refugee Protocol or other international obligations was not addressed in the Stevic decision.

8) Attachment II of your testimony claims that the State Department survey of returned Salvadorans directly interviewed only 120 people, "39 of those by telephone." According to the State Department, none of the 220 either directly or indirectly interviewed, or whose welfare was established by direct interview with family or friend was contacted by phone. Why were the telephone interviews alleged.

A: The State Department survey was conducted by the U.S. embassy in San Salvador. In July 1984, Amit Pandya, the former director of the Political Asylum Project of the ACLU of the National Capital Area, travelled to El Salvador and met with the U.S. embassy personnel who conducted this survey. Attachment II, in part, reflects the information he received during that interview.

If this information is not correct, the State Department has had considerable opportunity to provide us with accurate information regarding their methodology. Penny Beavis of the

Center for National Security Studies filed a FOIA request for detailed information about the methodology in October, 1984; that request has not been answered. Similarly, Rep. Barney Frank sent a letter to Elliott Abrams requesting detailed information regarding the conduct of the study in December 19, 1984. The return correspondence from Elliott Abrams does not respond in sufficient detail to inform us whether telephone interveiws were or were not used.

9) Attachment III of your testimony claims, in its conclusion, that, "If an individual's predominant motive for leaving his or her country is fear, that person should be considered a refugee." Do you believe that we should grant such persons refugee or asylee status, regardless of whether the fear is well-founded, and regardless of whether the persecution is based on race, religion, nationality, membership in a particular social group, or political opinion?

A: The paper called Attachment III was prepared by William Stanley, independent of the ACLU. The conclusions we view significant to the debate are those which resulted from his empirical analysis of Salvadoran refugee flows: ie., that, "strong empirical evidence, based on the actual behavior of Salvadoran, that fear of political violence _is the predominant motive_ behind the decision of Salvadorans to migrate to the U.S. since 1979."

The ACLU accepts for the purpose of conferring asylum, the definition of "refugee" in the Refugee Act of 1980. However, regardless of the definition of refugee which we employ for conferring asylum on a case by case basis, U.S. law provides for the temporary protection of persons who cannot demonstrate their entitlement to asylum but who nonetheless face risk upon return to their country. That protection should be available to persons from El Salvador.

ACLU RESPONSES TO QUESTIONS BY SENATOR DECONCINI
REGARDING S. 377

1. The Administration says that they have already done a study of the fate of those Salvadorans returned from the United States to El Salvador. Do you have any informtion on this study? Do you believe its results are reliable?

A: The Administration study has been characterized by Elliott Abrams as "flawed" and "unscientific". Yet, even the results of that survey are startling because they show that one percent of the people traced were dead within six months of their expulsion from the U.S. However, we have no ability to assess the validity of the State Deparment study or their findings.

2. Have any such results been done by groups outside the government? What were the results of those studies? What problems do you encounter trying to determine what happens to these returnees?

A: The only study we know of is the ACLU study which was appended to our testimony. It has been suggested that a study is being conducted by the Intergovernmental Committee on Migration; however, we have no knowledge of their findings.

4. Commissioner Nelson testified that the Refugee Act was intended to be the comprehensive method by which the United States would respond to all refugee-producing situations. He went on to say that the Refugee Act contains the sole basis for the United States to meet its obligations of non-return of refugees under the U.N. Protocol. How would you respond to this testimony?

A: The Refugee Act only addresses two situations: the bringing to the United States for resettlement, persons who have fled their homelands; and 2) the offer of firm resettlement to persons who are already in the United States and can demonstrate a "well-founded fear of persecution" on account of their race, religion, nationality, membership in a social group, or political opinion.

When Congress passed the Refugee Act it was aware of the simultaneous and parallel existence of the practice of extended voluntary departure. The legislative history of the Refugee Act indicates no intent to discontinue the practice of temporary suspension of deportation of specific nationalities for exigent humanitarian purposes. This is corroborated by the Administration's own continued use of the extended volutary departure to benefit nationals from Poland, Ethiopia, Afghanistan, and Uganda since 1980.

5. Commissioner Nelson also testified that it would be impossible for the Administration to carry out a deliberate policy to deny applications from nationals of friendly Central American countries. He gives several reasons why this is so, including the independence of immigration judges, the fact that the Board of Immigration Appeals is bound by its own judicial precedents, and the fact that these decisions are subject to judicial review. I know that the ACLU is involved in asylum cases; how would you respond to Commissioner Nelson's statements?

A: INS relies heavily on the Department of State advisory opinions because immigration examiners do not have the training nor the expertise to make independent judgments on human rights conditions abroad. This is reflected by the statistics which show that the INS is granting asylum to Salvadorans at a rate of 3%, which, according to Elliott Abrams, is the same rate at which the Department of State recommends favorable action on Salvadoran asylum applications.

Immigration judges, likewise, receive as evidence Department of State advisory opinions. As the INS does not capture statistical information pertaining to the numbers of Salvadoran asylum cases granted or denied by either the INS or Board of Immigration appeals, it is not possible to say precisely to what extent their decisions follow the Department of State recommendations. However, from our own experience, and those of our colleagues, it is rare for a judge to grant asylum over the objections of the Department of State.

6. One of the most often heard criticisms of our efforts to protect those who are involved do not really care about the individuals involved, but are merely critics of the Reagan Administration who are trying to make political points with this issue. I myself have supported the Administration policy in Central America for the most part as have many of my cosponsors. How do you respond to the idea that your appearance here and indeed your whole participation in this issue is politically motived?

A: The ACLU does not have a position on aid to the government of El Salvador. We view the protection of Salvadorans in the United States from a human rights, equal protection of the laws, and immigration perspective. We are deeply troubled by the suggestion that our involvement in this issue is triggered by political considerations.

Mr. **Henderson**. Thank you, Senator.

Senator **Simpson**. We go now to the final panel: Georges Fauriol, the Senior Fellow of the Center for Strategic and International Studies; and Lynn Bouchey, the President of the Council for Inter-American Security. It is good to have you here.

STATEMENTS OF A PANEL CONSISTING OF GEORGES FAURIOL, SENIOR FELLOW, CENTER FOR STRATEGIC AND INTERNATIONAL STUDIES; AND L. FRANCIS BOUCHEY, PRESIDENT, COUNCIL FOR INTER-AMERICAN SECURITY

Mr. **Bouchey**. Thank you, Mr. Chairman. I ask that my complete statement be put in the record and I will summarize.

In the case of El Salvador people are in some sense being forced or encouraged to leave that country either because of fear for their safety or because of economic deprivation caused by the war going on in there. However, whether the legislation being considered, S. 377, is relevant or appropriate hinges upon what is the principal cause for the displacement of persons from their previous permanent residence to other places either in El Salvador or abroad.

Three reasons are commonly advanced. First, people are fleeing economic hardship. Second, people have fled the conflictive zones in the Departments of Morazan, San Miguel, Cabanas, and Chalatenango, because war zones, combat zones are dangerous places to live. They are places that are not conducive to peasant agriculture.

People also are said to flee for fear of political persecution by the Government or by pro-Government forces because they proclaim or are suspected of harboring proinsurrectionary sentiments.

After some 8 or 10 trips to El Salvador during the past 4 years, most recently as an observer for the National Assembly elections, I am convinced that 99 percent or more of the displaced refugees are generated because of economic hardship, social chaos and confusion, and violence directly attributable to the war being waged in that society by a Marxist-Leninist insurrection. As long as one is able to avoid direct, conflictive situations, particularly in the provinces that I cited, which is the case for most of the people most of the time, Salvador is not a particularly dangerous place to live.

I have driven from Guatemala to San Salvador. I have walked around San Salvador during the daytime and at night. I have walked about La Libertad. And I will have to say, that I feel as safe in San Salvador or La Libertad as I do in most parts of Miami or New York or even Washington, DC. Very significantly, just 3 weeks ago Archbishop-Riera y Damas told me and two Congressmen who also were in El Salvador as observers, that things are most definitely getting better in El Salvador on the human rights front and in terms of the general conditions in the country, despite the fact that the economy continues to be in dire shape, largely because of the violence going on in the country.

Since the election of President Duarte last year, I find that there is a new, limited but pervasive optimism about the future. There was in fact a festive air surrounding the elections on Sunday, March 31 even in places like Usulutan where there has been significant rebel activity. Only in Morazan in San Francisco Gotera, did I perceive noticeable tension and an absence of a certain social exuberance on election day.

The displaced refugees may fear the inhospitable conditions in El Salvador if they are deported, but only a tiny fraction have legitimate fear of politically motivated reprisal. That might be the case for a relative handful of persons like Guillermo Ungo or Ruben Zamora who have publicly identified themselves with the insurgents.

On the other hand, the facilities and opportunities available to displaced Salvadorans in El Salvador are limited, and I commend the committee and the authors of this legislation for drawing attention to the plight of these people. One can understand why persons who have made their way to the United States, may not at this time be eager to return. One can understand why many of them may feign fear of political repression, seeing as how this is one of the only ways for them to delay their deportation.

It is probably the case that more resources should be provided to the resettlement facilities for displaced persons. Tens of thousands of people have been driven from their homes.

In conclusion, let me say that adoption of the bill before this committee would lend credence to the proposition that a truly significant number of the displaced Salvadorans are probably entitled to asylum as bona fide refugees from political repression.

In so doing, I believe the committee would cast a delegitimizing shadow over El Salvador's elected government. I would urge, on the other hand, that this committee take a serious look investigatively at what is the reality of the situation.

[Statement follows:]

PREPARED STATEMENT OF L. FRANCIS BOUCHEY

There is questionably something different about the character of recent immigration from El Salvador. The traditional migrant leaves his home because of poverty, inadequate education and a general lack of opportunity for personal advancement.

These have been and are the impulses that motivated Irish, Italian, Japanese and Mexican emigrants.

In the case of El Salvador, people are in a sense being forced to leave, either because of fear for their safety or because of economic deprivation caused by the war going on in that country. However, whether the legislation being considered is relavant or appropriate hinges on what is the principle cause for the displacement of persons from their previous permanent residence to some other place, either in El Salvador or abroad.

Three reasons are commonly advanced for the large number of displaced Salvarodans fleeing to the United States,

(1) people flee economic hardship created by the subversive terrorist war that has wrought havoc on the Salvadorian economy pushing down the CNP 25% since 1979;

(2) people have fled the conflictive zone in the departments of Morazan, San Miguel, Cabanas and Clalatenango because war zones are dangerous and not especially conducive to peasant agriculture and commerce;

(3) people flee for fear of political persecution by government or pro-government forces because they proclaim or are thought to proclaim or lend support to the revolutionaries.

After some 8 or 10 trips to El Salvador during the past 4 years most recently as an observer for the National Assembly elections, I am convinced that 99% or more of the displaced refugees are generated because of economic hardship, social chaos and confusion, and violence directly attributable to the war being waged by the Marxist-Leninist minority.

So long as one is able to avoid direct conflict situations, which is the case for most people nearly all of the time El Salvador is not a particularly dangerous place. I have driven from Guatemala to San Salvador, I have walked all over San Salvador both in day time and at night. I feel as safe in San Salvador or La Liberated than I do in most parts of Miami, New York, or Washington, D.C. And as Archbishop Rivera y Damas told me three weeks ago things are getting better.

Since the election of President Duarte last year, I find that there is a new, limited but pervasive optimism about the future. There was a very festive air surrounding the elections on Palm Sunday (March 31, 1985), even in places like Usulatan where there has been significant rebel activity. Only in Morozan did I perceive noticeable tension and an absence of social exuberance on election day.

The displaced refugees may fear the inhospitable conditions in El Salvador if they are deported, but only a tiny fraction have legitimate fear of politically motivated reprisal. That might be the case for a relative handful of persons like Manuel Ungo or Ruben Zamora who publically identify themselves with the insurgents.

On the otherhand the facilities and opportunities available to displaced Salvadorans in El Salvador are limited, and I commend the Committee and the authors of the bill under consideration for drawing attention to the plight of these people. One can understand why persons who have made there way to the United States are, not at this time, eager to return, and one can understand why many of them feign fear of political repression seeing as how it is one of the only ways for them to delay or deter deportation. It is probably the case that more resources should be provided for temporary resettlement of displaced persons inside of El Salvador. Tens of thousands have been driven from their homes and off their land in the East and into the cities, principally San Salvador. Also remember that most people don't want to leave their homeland and families, especially poor people with little education. But it is also the case that the prime objective must be pacification so that the displaced can return to their place of origin; to that end it seems that President Duarte is persuing every political, military and diplomatic avenue that is available.

Groups or individuals such as the "Sanctuary Movememt" that emphasize the fear of repression factor appear to be ill informed or motivated by the desire to discredit the Salvadoran Government and thereby Reagan Administration Policy in Central American. As the Wall Street Journal opined on April 17, 1985: "The evidence mounts that what we have here is not so much a spontaneous outpouring of Christian concern as it is a movement led by a politically selective network of activists running an aggressive offensive against U.S. foreign policy in Central America. Most of the time, the activists are content to let the church people get out front to give Scripture-quoting interviews. But the organizations' political directors have spoken often enough to make clear the "sanctuary" movement's familiar far-left agenda."

Adoption of the bill now before this Committee would lend credence to the proposition that a truly significant number of the displaced Salvadorans now in this country are probably entitled to aslyum as *bona fide* political refugees. In so doing the Committee would cast a delegitimizing shadow over El Salvador's elected government. If one probes beyond staged or superficial pronouncements by going to El Salvador and by talking directly with Salvadorans living here one will find little evidence to support the notion that any sizable number of people fear to return to El Salvador for reason of what can legitimately be called fear of political violence or repression.

L. Francis Bouchey Response to Senator Simpson's Question

Tutela Legal is the legal aid office of the Archdioces of San Salvador and for the last two years it has been the most frequently cited source of statistics on political violence in El Salvador. Press reports sometimes refer to it as "The Human Rights Office of the Catholic Church," or "Church Experts" or "Church Authorities." However, Tutela Legal is the only entity in El Salvador which has any connection to the Roman Catholic Church that tabulates information concerning political violence or civil rights violations. Its office which I have visited is in the headquarters building of the Archdiocese. It is headed by Maria Julia Hernandez who was once a philosophy professor at the National University. Tutela Legal has extremely limited resources, no professional investigative capability, and admits to doing no systematic field work or investigative follow-up on the incidents it reports.

On March 29, 1985, I visited the Archdiocese headquarters together with Congressman Robert K. Dornan, Congressman Vin Weber, three members of their staffs and Mr. John L. Plaster, a Minnesota - based freelance writer. In the morning we met for approximately an hour and a half with Archbishop Rivera y Damas. Later that afternoon we returned for a meeting with Maria Julia Hernandez in her office. This time we were accompanied by the human rights officer from the U.S. Embassy. Both meetings were tape recorded with the permission of our hosts. Based on those meetings Mr. Plaster prepared the following article, the accuracy of which I affirm:

"Slanted Human Rights Reports Distort El Salvador's Conflict" By John L. Plaster

She says it almost casually. "They kill them."

Congressman Robert Dornan, (R-Calif.), aghast, responds, "The army kills all their prisoners?"

Maria Julia Hernandez, Director of El Salvador's leading human rights organization, leans forward in her chair, her eyes widening, head nodding. "Yesss." The photographs of headless bodies and mutilated torsos she's already passed around bespeak a truth too horrible to deny.

Diminutive, sincere and with a controlled intensity, Ms. Hernandez is the unofficial keeper of El Salvador's attrocity statistics, the running score of those killed, kidnapped and tortured in her country's six-year guerrilla war. According to her, such human rights violations are practically the exclusive realm of the U.S.-supported Salvadoran government.

But her visitors this day, Congressman Dornan and his Minnesota colleague, Congressman Vin Weber, take an additional step not typical for most of Ms. Hernandez's visitors -- they check her information with the U.S. Embassy's human rights specialist. The response: "That's an outright lie. I know they took 1,114 (prisoners) last year." Frustrated at again facing a weathered charge, the U.S. official describes her numerous visits to, and discussions with, U.S. advisers in the countryside. "And they've never, ever reported one case," she emphasizes.

A few hours earlier, Rivera y Damas, El Salvador's archbishop and Hernandez's theoretical boss, told the Congressmen that he was pleased by human rights improvements in the army, specifically citing its willingness to take prisoners.

Confronted by the archbishop information, Hernandez conceded that, indeed, the army has begun taking prisoners. But she minimized this, claiming that prisoners are only taken in urban areas.

The organization she heads, Tutela Legal, (Legal Protection"), generates the grist for anti-U.S. policy newsletter and some shocking reports issued by American civil rights groups. Americas Watch, for instance, which releases detailed annual reports on human rights in El Salvador, relies heavily on Tutela Legal's information.

They would do well not to, for Ms. Hernandez is not a reliable source.

Among the litany of misdeeds she presented to the Congressmen, she ridiculed her country's elections, pointing out that voters are watched to see how they vote. When this was questioned, she recanted, saying that what she meant was that voters are intimidated by the presence of soldiers at the polling places.

Two days later I was an official U.S. observer for El Salvador's first national assembly elections and inspected five rural polling places where, beyond any doubt, no one could possibly view how a ballot was marked. Further, in the town of Zacatecoluca, while talking with the army lieutenant in charge of polls security there, I learned that soldiers were ordered to stay outside the polls so there could be no influenced voting. I inspected this and found it to be true in all five towns. The voters, I noted, paid no attention to the soldiers. Later I met a team of Swedish observers, who said their only observation was that in one polling place the lighting had been inadequate. Ms. Hernandez's claim was absurd.

Only a week after I left Zacatecoluca, two army trucks picked up twenty caskets there and delivered them to the nearby village of Santa Cruz Loma, where Marxist guerrillas had dragged as many people from their homes the night before, and slit their throats or shot them.

But, Ms. Hernandez had assured us, the Marxists treat the people very carefully and with great respect. After all, it is on their behalf that the guerrillas are fighting.

During the interview, she was specifically asked if the guerrillas ever use civilians to shield themselves from army gunfire. "No, no this is not," she replied. "They don't do that because they know that who is going to shoot [back] is going to [hit] the civilian people."

Ironically, her denial contradicts a report her own organization had prepared, detailing precisely such an incident in the northeast Department of Chalatenanago. The embassys human rights official told me, "I have it in writing from the testimony of witnesses, collected for Tutela Legal. If she sees something she doesn't mention it." Or, as in this case, denies it.

Ms. Hernandez has several polished techniques for dismissing, down-playing or disregarding the left's atrocities. For example, when civilians are murdered by the guerrillas, she explains, it is because "they are informers for the army." Thus, these are not `innocents' but `spies' who understandably get their just desserts for treachery.

But the record belies such a claim. Since January 1, eight Salvadoran civilians have been shot to death while driving along roads the FMLN guerrillas desired closed. Three victims were women. On February 17, three law students were kidnapped and executed in San Salvador, for membership in a military civic action program. None of these were informers for the army.'

Another significant target for leftist killings has been politicians. In the past year, three constituent assembly deputies -- the equivalent of Congressmen -- have been murdered, while seven lesser officials were assassinated in the past three months.

Ms. Hernandez magically dismisses many such Marxist killings with a wave of her hand and the declaration that these were perpetrated by "dissident" groups, as distinguished from the FMLN guerrillas, the prime "dissident" group being the Clara Elizabeth Ramirez Front, or "CERF" is directly supported by the FMLN, and the guerrilla radio station -- Radio Venceremos -- applauds CERF's murders. "You can excuse the guerrilla assassinations if you are in the business of doing so," the official explained, "just by saying it's done by dissidents."

In an attempt to head off the U.S. Embassy has been the virtual torrent of human rights abuse claims flowing from the U.S. -- and usually originating from Ms. Hernandez's office -- the U.S. Embassy has been amassing detailed accounts of each politically-motivated murder in the country. This information, covering the period January 1-March 15, is revealing.

Of the 82 politically-motivated murders identified during the period, 61 were clearly or probably attributeable to the Marxists, while five were likely committed by rightist death squads, with the remainder uncertain. The embassy report, which lists each victim by name, summarizes the circumstances of the murder, and explains why it was concluded [by the A] that a particular killing was attributed to a particular faction. In many cases, the Marxist killings have been determined by monitoring Radio Venceremos and Radio Havana, both of which are eager to boast of these grisly deeds.

By contrast, Ms. Hernandez explains she uses no precise methodology, but has learned through "empirical work" and bases most of her reports on sworn statements from witnesses. It should be reasonably conceded that there is no precise methodology, investigative forensic, which could help her accomplish a very difficult chore. But, given her existing techniques, perhaps her most questionable methodology is her reasoning.

She told the Congressmen that the March 24 assassination of retired General Jose Medrano was the work of right-wing death squads because, she reasoned, he was Roberto d'Aubuisson's mentor and had intimate knowledge of death squad activities. He was killed to silence him.

"It's just impossible to my mind that he was killed by the right," a U.S. Embassy official opined. Radio Venceremos celebrated his death," and "he was believed by the left to be a death squad leader." Hernandez's conclusion, the official said, was "beyond anyone's imagination."

The looseness of Hernandez's methodology lends itself to arbitrariness, the official warned, where "any brutal killing is a death squad killing."

This can extend to declaring that combat-related guerrilla casualties are murders, because the guerrillas are known to strip their dead of weapons and indentification. When a common grave is found, the FMLN casualties can be interpreted as killing by the army, switching an indicator of army effectiveness into an allegation of murder.

Adding to the problem is a precise definition of what Ms. Hernandez thinks a human rights violation is. On March 27, Marxist guerrillas fired Soviet-made rockets at the National Police headquarters in San Salvador, killing a 27-year-old street vendor and wounding four passersby, among them a woman whose legs had to be amputated. Likewise, during a failed assassination attempt against Central Elections Council President Marion Samayoa on February 28, two innocent civilians (and two of Samayoa's bodyguards) were killed. These deaths can be dismissed by Hernandez, because they were committed during a 'legitimate' military operation, (the police station attack) or downplayed because they were committed by a dissident group.

She told the Congressmen that any policy officer is a legitimate military target -- off-duty or on-duty -- because he's part of the national military structure, wears a uniform and carries a gun. By this reasoning, the February 23 ambush murder of police Capt. Fidel Lopez Nolasco, who stepped from his squad car to buy a birthday cake, is justifiable and not a human rights violation. Ten police officers have been slain this year under similar circumstances.

What is, perhaps, most perplexing to U.S. officials in El Salvador is the eagerness with which Tutela Legal's one-sided reports are accepted in U.S., creating the impression that only government forces and rightist death squads are capable of atrocities. Using information obtained from Ms. Hernandez, a 1984 Americas Watch report, As Bad as Ever -- A Report on Civil Rights in El Salvador, contained only a passing reference to leftist killings. "Certainly, these groups commit some abuses," the report states, "but those violations take a relatively small part of the toll in lives of civilian non-combatants. The great majority of the political murders are committed by the regular security forces and the army as part of their regular operations."

Today, Ms. Hernandez says the prime human rights violator in El Salvador is the air force, presumably for indiscriminate bombing of civilians. Additionally, she says the second greatest violator is the army, with the U.S.-trained Atlacatl Battalion leading other units. Curiously, though, these are exactly the military elements most effective against the guerrillas. As one U.S. official told me, "Whatever the guerrillas fear most, that's the most egregious human rights violator."

Ms. Hernandez's method of ending human rights abuses, too, parallels the guerrillas' agenda. She told Congressmen Dornan and Weber, "You have to find the way to stop any military aid. Any military aid."

And, what of the ultimate solution? Already declaring the country's elections a sham, Hernandez says her people long for "real democracy," but doesn't define it.

If Tutela Legal's representations are, indeed, distortions, how can the group be affiliated with the Catholic archdiocese, a relationship which gives Hernandez great credibility? The reason, I was told, is that Archbishop Rivera y Damas sees his role as trying to bring together his country's disparate opponents, of left and right. If he were to dismiss Hernandez and Tutela Legal -- which he did with its predecessor, reportedly for becoming a propaganda organ -- Salvadoran liberals and leftists could accuse him of favoring the right and the government, and insensitivity to injustices.

"The bishop is not her boss," the U.S. human rights official told me, "she does what she wants." This includes contradicting the archbishop, which she did twice during the Congressman's discussion, the most pointed diversion being her allegation that the death squads continue to operate under the direct control of the army, while Archbishop Rivera y Damas praised President Duarte for dismantling the army's death squads.

Where, then, lies the truth? It is important to recognize that, in fact, thousands of Salvadorans have undoubtedly been slaughtered by rightist death squads, and this cannot be morally minimized.

But, equally, the slipshod methodology and apparent partisanship shown by Tutela Legal does a tremendous disservice to both the victims of murder in El Salvador, and the morally concerned people throughout the world who have looked to Ms. Hernandez for precise, objective information on her country's troubles. Her own blindness -- intentional or not -- to Marxist atrocities has given the FMLN an undeserved image of moral superiority, while misdeeds of El Salvador's armed forces are undoubtedly over-stated.

Ultimately, the disservice is to the cause of human rights, itself.

I should like to emphasize and elaborate on three points contained in Mr. Plaster's report on our meeting with Ms. Hernandez and then provide you with an analysis of how the information disseminated by Ms. Hernandez fits into a broader propaganda campaign of disinformation aimed at the U.S. public in general and the U.S. Congress in particular.

1. Ms. Hernandez contradicted the Archbishop with regards the importance and efficacy of the electoral process; the honesty of the electoral process; change for the better in the character of the military leadership; improvement in the human rights situation in El Salvador. On each issue the Archbishop was positive whereas Ms. Hernandez was negative.

2. She contended that police are military combatants, even though that is contrary to the Geneva Convention. This was typical of her attempts to always put the revolutionaries in the most favorable light in terms of human rights. According to her anyone who actively opposes or tries to defend themselves against the guerrillas is a legitimate target for the FMLN.

3. In response to my inquiry about Tutela's investigative methodology she offered a knowing smile and said they had developed their own but could not explain what it was. There is one lawyer on the staff, and ten or twelve other persons none of whom have any relevant training.

Consider now how we Americans have been caught in a manipulative human rights numbers game that generates support for the widespread impression that El Salvador is a land of extensive, offical or semi-official repression.

Senator Edward Kennedy held an unoffical forum in the Capitol in July, 1984 to examine human rights violations in El Salvador and Nicaragua. In an opening statement, Kennedy quoted "Martin Luther King, saying, "Violence begets violence;" thus, raising the question who is killing whom in Central America?

Three Salvadorans, Monsignor Freddy Delgado of the official Salvadoran Human Rights Commission, Cristobal Aleman of the Salvadoran Peasant Union (UCS), and Father Alberto Almicar Toruella, the director of the Archdiocese of San Salvador's newspaper, Orientacion all spoke at the Senator's forum about who was begetting violence in their country.

Monsignor Delagdo described guerrilla kidnappings and murders, holding up photographs of the mutilated corpses of civilians as he spoke.

Cristobal Aleman talked about death squads. He also talked about the peasants in his union. "The peasants want peace." he said. "They do not want the guerrillas who are destroying our country."

Father Almicar, however, was most eloquent. Directly addressing the Senators on the panel, he said: "You will forgive me if I do not talk about more than sufficiently documented in hearings such as this. I want to talk to you about something very important. We (liberals) have spent so much of our time condemning the murderous right that we have fallen into the trap of ignoring the violence and the murders of the Marxist left in El Salvador."

Congressional approval of continued aid to El Salvador has been and is contingent upon improvements in the human rights situation there. It also influences, and very rightly so, how we Americans deal with persons fleeing El Salvador. Congress' attitudes on the state of human rights in that country, however, is contingent upon the information available to its members. Unfortunately their information is not only often vague, but, at times, highly questionable.

For more than a year, it was widely said, and accepted, that the government of El Salvador was responsible for the deaths of twenty to twenty-five thousand people. Then, when I testified before the House Foreign Affairs Committee in 1983 Congressman Peter Kostmayer (D-PA) referred to fatality estimates as high as forty thousand. The major news media consistently alleged that the government is responsible for between forty and forty-five thousand deaths. But where do those numbers come from?

The American public has never been presented with a systematic examination of the numbers and facts regarding who is killing whom in El Salvador. An incredible number game is being played in the United States in the name of human rights.

The impact of this numbers game is obvious. The American public is given no alternative but to believe that the Salvadoran Government's hands drip with the blood of tens of thousands of innocents. Even if this accusation were true, it would not explain why guerrilla atrocities go largely unreported in the U.S.

To understand the magnitude of guerrilla violence one need only listen to what the Communists themselves say. On May 1 (May Day) 1984, the Farabundo Marti National Liberation Front (FMLN) issued a communique which stated: "Since 10 January 1981 to date, we have inflicted more than 18,000 casualties on the enemy." Again, these are more numbers," but it is not a figure that you hear batted around on the CBS Evening News.

Where then does misinformation on human rights abuses in El Salvador come from? To my knowledge, only the Council for Inter-American Security and the U.S. Embassy in San Salvador have tried to add up the numbers and to questions the sources so frequently quoted in the press most reporters only have enough time and budget to write and file an immediate resource story. They report the story which story tellers are ready to tell them. They are not detectives!

But the search for facts has to begin with, the sophisticated political propaganda campaign being waged in the U.S. by surrogates of the Communist revolutionaries in El Salvador.

A major force in this campaign is the Committee in Solidarity with the People of El Salvador (CISPES). According to captured Salvadoran guerrilla documents made public by the U.S. Department of State, CISPES was founded by Farid Handal, close collaborator of the Salvadoran Communist Party. (Farid's brother Shafik is Secretary General of the Communist Party of El Salvador and has served on the general command of the FMLN.)

According to one captured document, Farid Handal came to the United States in February and March 1980 to organize a broad-based movement in solidarity with the Marxist revolutionaries in El Salvador. Throughout the document, Handal emphasized the need to present the Salvadoran problem with "human features." The document also stressed that alleged atrocities on the part of the Salvadoran Military and the right should be emphasized so as to favorably affect world opinion.

CISPES was founded with the close collaboration of the CPUSA (Communist Party, USA) and the United States Peace Council (the U.S. affiliate of the World Peace Council, identified by the CIA as "the Soviet Union's single most important front organization") and by an agent of the Cuban Secret Service, Alfredo Garcia-Almeda. CISPES' charge was to serve as a support appartus for the FMLN guerrillas and their politcal arm, the Democratic Revolutionary Front (FDR). CISPES also was to coordinate existing U.S. groups so as to facilitate control over their work by the FMLN.

The operation has had some success. Today, CISPES is headquartered in Washington, D.C. with support groups around the country. Along with FMLN and FDR documents and statements, it gathers and distributes information on other sympathetic left-activist groups through its newsletter and other publications. CISPES coordinates mass demonstrations, press conferences, and fundraising events on behalf of the guerrillas

Another facet of the FMLN propaganda campaign is detailed in a sophisticated document captured from the guerrillas in May 1981. Entitled "Operation Eagle," the document describes guerrilla efforts to subvert foreign correspondents and use them as conduits for disinformation.

As a master plan for recruiting and maintaining assets within the "bourgeois" press, Operation Eagle described the FMLN as not having "succeeded in solidly (italics added) penetrating the agencies with the greatest international impact." It noted, however, that the terrorist had "advanced the most," by having recruited reporters, in the Associated Press, the United Press International and the Spanish news agency EFE.

In pressing the need for greater contact with the foreign press, Operation Eagle distinguished partisan propaganda from what it called "objective" or neutral" propaganda: "In neutral propaganda, it is fundamental to use the technique of supposed 'neutrality,' 'objectivity' and 'impartiality' as much as possible. This is achieved by using another media, and not the Party, to affirm or deny something. It is what gives impact to the transmitted message."

In other words, pro-revolution propaganda that would be disregarded by the public if it were to come openly from the guerrillas' front becomes credible if it is communicated by an American newspaper or magazine in the guise of factual reporting.

Another element of Operation Eagle called on the FMLN to "continue" (italics added) using institutions controlled by us, such as the Commission on Human Rights."

It is illuminating that the Commission on Human Rights was revealed to be a Marxist front. The Commission had been the source of numerous news accounts of atrocities allegedly committed by Government security forces reported in such major media as the Washington Post.

There has never been an in-depth investigative report by the U.S. press of the Commission on Human Rights, its personnel, ideological orientation or political connections. 1) Until now the same was true of Tutela Legal!

Most American "human rights" activists have been dependent on statistics and case studies taken from friendly organizations in El Salvador. Along with the Commission on Human Rights, the original legal aid office established by the late Archbishop Arnulfo Romero, Socorro Juridico, was a major source of statistics on alleged government atrocities. Due to its apparent ties to the Church, this organization would appeared to be eminently respectable.

The truth is the Socorro Juridico was disavowed three times by the Catholic Bishops of El Salvador. In January 1982, the bishops declared that the organization "creates confusion" and disseminates information that is "distorted for political reasons and partisan interests."

In May 1982, the Church finally evicted Socorro Juridico from the Church owned quarters it had occupied. (Many uninformed political figures in the U.S., however, continue to brandish numbers served by that group as if they were accurate and endorsed by the Church). Tutela Legal replaced Socorro Juridico as the new church-affiliated legal aid office. Athough Tutela Legal was invested with a new governing board, the thrust of its allegations did not change. Socorro Juridico continues to operate, but is severed from the Church. The close correlation of figures on human rights abuses released by the revolutionary-controlled Commission on Human Rights, Socorro Juridico and Tutela Legal points to some degree of ongoing cooperation.

Since Socorro Juridico's ouster, Tutela Legal has become the focus of "fact finding" pilgrimages by anti-El Salvador lobbyists. While claiming to use the direct testimony of witnesses, the San Salvador based Tutela Legal records undocumented and uncorroborated reports of human rights violations as absolute fact; whether taken from an innocent peasant or a guerrilla activist posing as a peasant. Its claims are neither systematic not thoroughly researched.

Benjamin Cestoni, Executive Secretary of the official Huamn Rights Commission of El Salvador (not to be confused with the Marxist controlled Commission), on his first trip to Washington recently, was shocked to see Tutela Legal's statistics widely presented as definitive in Congressional hearings and other U.S. public forums. He said, "It is very difficult to get information to compile such complete figures. Not even we, who have contact with every justice of the peace and mayor in El Salvador, can compile such detailed statistics." He said that he had never seen any of the total figures attributed to that office published in El Salvador. (Orientacion, the Archdiocesean newspaper, is alone in publishing descriptions of selected cases handled by Tutela Legal).

As Bad as Ever: A Report on Human Rights in El Salvador, a seventy-four page study published in January 1984 by the Americas Watch in collaboration with the American Civil Liberties Union, quotes Tutela Legal's overall civilian casualty figure for 1983 of 5,142. Tutela Legal alleges that this figure is the sum of those who died at the hands of the death squads and in military actions. The report labels these deaths as the "government murder of non-combatant civilians" and as "political murders."

The ACLU/Americas Watch report holds the government of El Salvador responsible for the overwhelming majority of these so-labeled civilian murders, while hardly blaming the guerrillas at all. The report also classifies the victums of death squads as government murders, thus implying that extremist groups carry out political executions on government orders. This is blatant misrepresentation and a distortion of facts.

In his prepared statement before the House Foreign Affairs Committee, Americas Watch Vice Chairman Aryeh Neier conceded that "some persons are killed in crossfire;" and that "some civilians actively aid the guerrilla cause, making it "not always easy to distinguish guerrillas from civilians." However, these disclaimers did not prevent Americas Watch from repeating Tutela Legal's misleading casualty figures as fact in its testimony. A review of published news reports and of U.S. Embassy data clearly shows that Tutela Legal's casualty figures do in fact include all persons (soldiers, rebels and civilians) killed; most as a consequence of firefights between the rebels and the Army.

Among the reference sources mentioned by Americas Watch were the Commerce Department's Foreign Broadcast Information Service Daily Reports (FBIS, a collection of international news broadcasts and newsprint from both public and clandestine sources). In August 1983, the Council for Inter-American Security gave testimony before the House Subcommittee on the Western Hemisphere on revolutionary terrorism in El Salvador. Using the FBIS reports, CIS tabulated that, from October 1979 to June 1983, 21,945 Salvadorans were killed, wounded, kidnapped or held hostage by revolutionary groups.

Several members of that Subcommittee asked the Council to prepare a similar study comparing revolutionary violence with pro-government violence. The completed report showed a not surprising parallel in the overall casualty figures attributable to both sides.

While precise figures detailing the sources of violence in El Salvador are impossible to ascertain, it is useful to compare, in the interest of balance, the figures on government violence presented by both the Americas Watch and the Council for Inter-American Security.

The FBIS daily reports, on which the Council's numbers are based, carry the country's most important stories from that day. These reports are not exhaustive, but in the case of Salvadoran violence, they do appear to be quite comprehensive. These are public sources, broadcast or published by both sides. These numbers are not the last word, but they are more balanced and more in line with reality than are those commonly heard in public forums.

Methodologically, it should be stressed that when there was more than one report of an incident and casualty figures differed, we opted for the lowest figure.

Compared are the compiled statistics for 1983.

Using the gross casualty figures supplied by Tutela Legal (including so-called death squad killings), Americas Watch claims that 5,142 non-combatant civilians were killed by government forces. According to this source, these 5,142 casualties included no soldiers or members of Communist revolutionary military units. The Council for Inter-American Security, by way of contrast, tabulated through public reports, a total of only 403 non-combat civilian casualties attributable to pro-government or death squad forces for the same period.

U.S. Embassy analysts have reached conclusions similar to mine and I urge this subcommittee and the entire United States Senate to undertake a thorough investigation of the Human Rights numbers game in which Ms. Maria Julia Hernandez and Tutela Legal are playing so well.

L. Francis Bouchey Response to Senator DeConcini's Questions

Question. Why do you believe that suspending deportations while the situation in El Salvador stabilizes lends credence to the notion that these persons are entitled to political asylum?

Answer. This proposed legislation is based upon the proposition that a truly significant proportion of illegal Salvadoran Immigrants may indeed have specific reasons to fear returning to El Salvador because of their political beliefs. I do not accept the credibility of that proposition; nor do I consider it sufficiently plausible to warrant an 18 month long investigation by the General Accounting Office.

Beyond the facts of the case, there is a larger issue of policy. The United States is endeavoring to support the reformist Christian Democratic Government of El Salvador by recognizing the startling improvement in the country's human rights situation as well as through economic and military assistance. This proposed legislation could tend to undercut this important moral support by tacitly calling President Duarte and the Christian Democrats too weak to provide basic guarantees to Salvadoran citizens.

On the other hand, one might make a case for suspending the deportation of illegal Salvadoran immigrants until the economic and political situation stabilizes in the resettlement areas until the resettlement camps can adequately support these people. Even this case would be weak. But that, Mr. Chairman, is a different line of argument than the one on which this proposed legislation is premised.

Question. You testified, and I agree, that most people don't wish to leave their homeland. However, the violence, economic and social choas that has resulted from the civil war has driven these people from their home. Wouldn't you agree that as the situation improves in El Salvador that the migration will decrease and that it would assist the current government to allow those persons present to remain here temporarily?

Answer. Allowing Salvadorans now in the U.S. to remain here temporarily would tend to take some pressure off the Salvadoran government. However, those pressures can also be relieved by providing sufficient aid for the resettlement of those displaced persons now in the United States.

Furthermore, the idea of granting any refugees, especially Salvadorans, legal status in the United States only temporarily is impractical. The Salvadorans are known for their hard work and industry. Many of these people would take advantage of the great opportunities in this country to develop lives that later they would not want to leave. How, then, will the U.S. Government decide who must return, and even more problematically, when will they have to return? How will we judge when the situation in El Salvador has improved enough? Clearly these questions suggest the potential for a political and administrative disaster if this proposal is implemented. Instead, it would be far more practical to help Salvadorans re-build their own beloved country.

Question. You testified that Salvadorans in the United States may fear return to El Salvador because of the "inhospitable conditions" by which I assume you mean the war, but that they do not have good political asylum claims. But isn't that the point—that they fear the general conditions and violence caused by the war but are unable to meet the high legal standard of specific persecution and therefore, deportations should be suspended until the situation stabilizes?

Answer. My response to this question is essentially the same as my response to your first question, Senator DeConcini. Let's not try to justify giving special treatment to war refugees on the grounds that their government persecutes them. The Duarte government is trying to defend its citizens, but this legislation before us entertains the proposition that it is not.

There are quite a number and variety of wars going on in the world at the moment, yet this proposed legislation aims to only help persons fleeing one particular war. There is no logical basis for this favoritism.

Question. In your testimony you discuss numerous trips to El Salvador. Could you tell us if you were provided any security or escort during these trips, particularly, the one in March of 1985? If yes, by whom?

Answer. Security was a consideration for many people in 1981 and 1982. Sometimes friends or the Embassy would provide armored cars, drivers and body guards. This sort of protection was required or thought to be required by the well known, the well to do, and by public officials who could be considered possible targets. People in that catagory still should be somewhat cautious. On this last trip, as an observer of the elections there was armed security present only at the Hotel where all the observers were staying and on the helicopters taking us around the country on election day.

However, my party which included Congressmen Vin Weber and Robert K. Dornan went out on our own without any security by cab and on foot. Last summer I drove with friends from Guatemala to San Salvador without any special security protection. On that same August trip four of us hired a cab off the streets for the day to go from San Salvador to the beach in La Libertad.

Senator **Simpson**. I thank you very much. And now Dr. Fauriol, please.

Dr. **Fauriol**. Thank you very much, Mr. Chairman. Specifically I have been asked to comment on the broader context implied by the Salvadoran EVD issue; namely, that constituted by U.S. foreign and even security policy considerations.

In the time allotted to me this morning I would rather, therefore, like to summarize my thoughts by drawing from the written testimony submitted to the committee. First, obviously, as has been implied already by others this morning, the process that deports Salvadoran nationals back to their country obviously does not operate in a vacuum. It is part of a system of programs, agencies, foreign and domestic policy considerations. And, therefore, tinkering with this process a bit further, I think, as proposed by S. 377 without a full account of overall national strategy and long term objectives is most likely simply going to add another complication to this Nation's existing glut of immigration regulations.

Second, the deportation process obviously also operates in the context of U.S. regional strategic realities, which may be summarized very briefly as; (A) issues involving economic and sociopolitical trends that cause instability in the region; (B) the excessive so-eastern bloc role in this process, which at once renders regional solutions more difficult and injects international strategic political consideration into an already difficult situation; and (C) the unique Nicaraguan connection with Cuba in all of the above.

Thus, the immigration policies of the United States are in part really a function of its foreign policies. They relate to the political and economic conditions which the United States faces as opposed to creates, as some would suggest, overseas and Central American in this particular case.

Going to the heart of the matter, U.S. immigration laws and associated policies are well intentioned, but they would count for little if they are either being outstripped by changing realities in El Salvador, improving realities, I might add, or are generated without commensurate foreign policy considerations.

Frankly, I doubt that El Salvador's critical problems of ideology, of insurgency, economic and social problems are going to be addressed by ad hoc measures such as proposed by S. 377. Obviously, the proposed GAO report might be able to address some of these issues, but I do not think that is really the case. In fact, by proposing to change the EVD question now, it appears to prejudge the conclusions of the report later.

Let me, therefore, conclude by identifying six illustrative issues relevant to the present discussion. First, there is, I think, generally a sense of microsolutions to El Salvador's major challenges that neither resolve Salvadoran migration issues or, for that matter, addresses the broader sources of regional migration.

Second, the probable invitation to suspend the conscious monitoring of the flow of aliens from Central America as a whole into the United States.

Third, a likely further blurring of the multiplicity of forms already characterizing migration from the region and elsewhere in the world most likely hampering an already overtaxed immigration system.

Fourth, the perception in Central America, if not elsewhere, that the principles that govern U.S. immigration laws and do relate them to humanitarian as well as political considerations are in fact sufficiently open ended as to invite widespread abuse.

Fifth, to discount the potential political and social implications of large populations remaining in the United States whose original entry here was in the first place technically illegal and whose future status would remain quite uncertain, since it would depend in part on an interpretation of events in Central America.

Finally, sixth, running the danger at some point of triggering, I think, a conscious policy by hostile groups or governments in the region or elsewhere resulting in major human flows toward the United States.

The latter is, let us face it, a security issue whose dimensions we remain unwilling to deal with terrible effectively.

I will end at this point. Thank you very much, Mr. Chairman.

[Prepared statement follows:]

DEPORTATION OF SALVADORAN NATIONALS TO EL SALVADOR:

THE BROADER CONTEXT

Testimony before the Subcommittee on
Immigration and Refugee Policy
United States Senate Committee on the Judiciary

April 22, 1985

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Introduction

The process that deports Salvadoran nationals back to their country does not operate in a vacuum. It involves what Congressman Dante Fascell, in a December 1980 address at Georgetown University, characterized as a "crazy quilt of programs, agencies, and foreign and domestic policy considerations." Tinkering with the above process a bit further, without a full account of overall national strategy and long-term objectives, is most likely going to add another layer to the Congressman's "crazy quilt."

The above deportation process also operates in the context of U.S. regional strategic realities. Specifically, these can be identified as follows: 1) the economic and sociopolitical trends that cause instability in the region; 2) the excessive Eastern bloc role in this process, which at once renders regional solutions more difficult and injects international strategic political considerations into an already difficult situation; 3) the unique Nicaraguan connection with Cuba; and 4) the difficulties of specifically defining U.S. interests. Translated into policy objectives, the above means, first, a broad-based, comprehensive policy aimed at promoting economic progress and social stability in the region; second, direct and excessive Cuban involvement in the regional course of events must be disengaged, both as a strategic imperative and to facilitate the stabilization of Central America.

Thus, the immigration policies of the United States are, in part, a function of its foreign policies. They relate to the political and economic conditions which the United States faces -- as opposed to "creates", as some would suggest -- overseas, in this case Central America. They should interact with U.S. foreign policy and even security initiatives designed to defend or reconstruct the vital societal components of domestic economic and political stability in the region. U.S. immigration and refugee policies also overlap with international cooperative measures, from asylum to resettlement, which is itself, in part, a function of multilateral diplomacy. And finally, American immigration policies also reflect the combined strains and values of our domestic society as well as the opportunities and challenges that we face as a global power.

Therefore, let us go directly to the heart of the matter. U.S. immigration laws and associated policies are well intentioned, but they count for little if they are either being outstripped by fast moving international realities, or are generated without commensurate foreign policy considerations. Fundamentally, I doubt that El Salvador's critical problems of ideology, insurgency, and economy are going to be addressed by *ad hoc* measures as proposed by S.377; not that the latter is designed to address those tasks. But the proposed legislation's flaws should not be explained away as intentional limitations; this represents a conceptual flaw.

Central American migration is not a temporary irritant; its origins are multi-faceted, and its potential effects long-term. A shift on the Salvadoran deportation issue appears to imply several unfortunate developments:

- first, generally, a micro-solution to this country's and El Savador's major challenges, that neither resolves Salvadoran migration issues, or addresses the broader sources of regional migration;
- second, a probable invitation to suspend the conscious monitoring of the flow of aliens from Central America as a whole into the United States;
- third, a likely further blurring of the multiplicity of forms characterizing migration (from legal permanent migration, to refugee flows and asylum), most likely hampering an already overtaxed immigration system;
- fourth, a perception in Central America, if not elsewhere, that the principles that govern U.S. immigration laws, and relate them to humanitarian and political considerations, are, in fact, sufficiently open-ended as to invite widespread abuse;
- fifth, to discount the potential political and social implications of large populations remaining in the United States whose original entry here was technically illegal and whose future status would remain uncertain;
- sixth, running the danger at some point cf triggering a conscious policy by hostile groups or governments in the region resulting in major human flows toward the United States. The latter is, let's face it, a security issue whose dimensions we remain unwilling to deal with.

Foreign Policy Perceptions

The security of the United States has suffered in the past as a result of the government's impotency in the face of massive illegal immigration, and it will continue to suffer as the situation becomes more complicated. Employment levels, domestic political cohesion, national resources, and the global standing of the United States can all be adversly affected by the current state of U.S. immigration policy. If these concerns are not effectively addressed, there is a real danger that relative government inaction will be followed by public overreaction.

One of the primary reasons for the lack of attention paid to effective immigration policy in the past is the sensitivity of the subject. After all, the imageries of the United States as a nation of immigrants are both powerful and accurate. The very fabric of American society has been affected by it. However, these imageries most likely refer to a world environment that no longer exists.

The extent of annual illegal immigration into the United States -- approximately 650,000 in lean years -- and the political, economic, and social ramifications suggest a dangerous anomaly. A gap has developed between the symbols of a "nation of immigrants" and the realities of the "huddled masses yearning to be free." In focusing on the significance of immigration policy to the national interest of the United States, it is necessary to note two aspects of current U.S. immigration policy that adversely affect the security of development of other nations. The "drain" of skilled professionals and proponents of political freedom from many Third World nations, encouraged in large part by U.S. immigration policy, undermines the human pool of political and economic talent of those countries. Conceivably, it enriches our own. The irony is that the economic and political changes required of "developing" countries, including those in Central America, are likely to be delayed if migration to the United States remains, ipso facto, an integral aspect of "development" policy.

Looking over the horizon, the implications of this for the United States are serious though uncertain. As this country speeds toward the twenty-first century, one has to express considerable alarm at the laid-back attitude regarding migration flows to American shores. The linkage with foreign policy and national security is not always a direct one; it is a delicate process, and, above all, one difficult to articulate. To dismiss a relationship between immigration and foreign and security policies suggests ignorance of the interrelationships present in the world today -- a world whose future trends will not always be favorable to the United States.

U.S. Foreign and Security Policy

The issues of immigration and refugee policies have acted as substantial destabilizing forces in the already precarious North-South relationship. These issues feed on the larger issues of Third World poverty, population growth, hunger, war, and revolution. For example, the countries of El Salvador, Honduras, and Nicaragua will double their populations in twenty-two years at present rates of growth. The labor force of these three countries alone will double between 1975 and 2000 to around 13 million. Poverty, hunger, unemployment, and illiteracy remain serious problems, primarily as a result of an explosive growth in numbers far beyond the capacity of these nations. Add to this inflexible political institutions, external ideological influences, and a poor natural resource base, and the ingredients for turmoil and civil conflict are abundant. As General Maxwell Taylor has warned, "If Central America today is an inviting pond to communist fishermen, under the conditions forecast it will offer them a well-stocked lake."

There is a vicious cycle of poor economic and political conditions in the Third World, and a consequent steady stream of migration to the United States. One may argue that present American immigration policy creates this vicious cycle through a lack of enforcement measures which then encourage and simplify Central American immigration to the United States.

Uncontrolled immigration may be undermining U.S. foreign policy in three further areas: (1) the inability of the United States to control its national borders directly weakens its national security; (2) the failure of the United States to adopt an enforceable immigration policy is leaving it open to international coercion; and (3) the traditional ability of the United States to provide a haven for victims of political oppression is impaired by the massive amount of illegal immigration, the majority seeking to improve their economic status, entering the country every year.

Unenforced Borders

It is often said that illegal immigration from the developing world acts as an important safety valve to relieve population pressures. Unfortunately, such a view obscures more important issues concerning U.S. national interests. For example, while it is undeniably important that the United States maintain productive relations with Mexico, one has to realize that an unenforced border with Mexico is an unenforced border with the world, beginning with Central America.

Lacking enforceable immigration statutes, the United States faces pressure from the developing nations that will increase dramatically over the next two decades, just as it has over the past several years. As migration increases, its ability to undermine the security of U.S. allies increases significantly as well. Already Somalia, Thailand, and Pakistan have been the recipients of massive movements of those fleeing civil war, political turmoil, and economic difficulty. Such refugee populations are seriously straining the civil and social order of these nations. Engendered as such problems are by the Soviet Union and others, it does not appear likely that these exoduses will be curtailed over the next generation. In fact, hostile countries will continue to find it convenient to expel dissidents and "bad" elements from their own societies, thereby at the same time creating further difficulties for their opposition. Central America may ultimately be a perfect target for such an initiative.

International Coercion

The extent to which U.S. foreign and domestic policy can be manipulated by foreign governments, some openly hostile to U.S. interests, by the use of large-scale illegal immigrant flows, needs to be addressed. Because of its laxity with respect to enforcing the sovereignty of its own borders, the United States finds itself in a vulnerable position. How often will the United States, in the future, find itself reacting to the actions of a foreign power in a manner that is injurious to our society? Would countries threaten to cut off the flow of petroleum should the United States decide to enforce or strengthen its immigration statutes? Would Eastern bloc nations threaten to tighten their grip unless the United States agreed to accept a greater number of "Dissidents"? Would Vietnamese officials continue to exploit the desire of their own people to emigrate, bleeding them of precious life savings because they know the United States would accept them, no questions asked? Does the United States accept whatever criminals the Cuban government deems it does not want simply because some among the group claim to be political refugees?

Will nations everywhere find in the United States a convenient refuge for its domestic dissidents or political opponents, thus eliminating a potential wellspring of political democracy? Does this country wish to continue to be met with threats from foreign governments wishing to get rid of people they find inconvenient? And how much leverage will this country have with other governments in efforts to have them accept their fair share of refugees and immigrants when they know that the United States itself has no effective means of controlling immigration?

Refugee Policy

Refugees have become one of the more dominant trends in international migration. Along with the traditional element of political refugees have been added those people fleeing civil disturbance, wars, revolutions, coup d'etats, and generally poor economic conditions. This affects Central America in a unique way. Unfortunately, debate about refugee policy usually touches on domestic economic and political impacts with little discussion of the international considerations involved. U.S. refugee policy is, in part, a foreign policy issue; its importance will increase as the number of refugees in the world, some ten to fifteen million, continues at present or higher levels.

The foreign policy of the United States requires that this country be able to extend to those politically persecuted a safe haven. This is a traditional and humanitarian aspect of U.S. policy, which most Americans associate with the best aspects of American society. In order to preserve this essential aspect, however, there is a need to maintain a foreign policy which has as one of its objectives the protection of its frontiers from excessive illegal immigration. One can argue further that the key is a policy which acknowledges the need for restricted entry while preserving the concept of refugee asylum.

While much attention has been paid to the domestic economic impacts of immigration, little has been said concerning its relationship with the emerging international economic and political context in which the United States finds itself. In addition, the disruptive effects of uncontrolled immigration on the political unity of the nation has also largely been ignored. The evidence is very strong that the international push factors generating illicit and legal immigration are among the most powerful contemporary factors in international affairs. Thus, the context in which traditional or historical migration to the United States has occurred is no longer relevant to the current global situation. The myths of the past must be discarded for the realities of the present.

U.S. international economic policy and success in competing overseas will depend in large part upon increases in U.S. economic productivity, including a highly trained work force, and increased business investment. Immigration, both legal and illegal, may in the future create a permanent underclass of unskilled workers, many of whom will remained unemployed.

Also, there is a concern that the growing use of racial or ethnic political power blocs in the United States will foster a divisiveness within American society. This issue is not stated here lightly. Since the 1970s, for example, bilingualism has become a highly visible public agenda in schools, governments, and media. Its relationship with present trends of large migration flows of people from Spanish speaking countries is obvious. Ethnic power group manipulation of U.S. foreign policy is nothing new. Will a nation divided along ethnic or liguistic lines be a united nation, able to carry on a bipartisan and consistent foreign policy?

Finally, uncontrolled immigration is resulting in foreign countries using migration as a foreign policy weapon. Cuba and Vietnam, most notably, have sent their political dissidents, criminals, and espionage agents to the United States with the knowledge that the U.S. government is currently unable to control immigration into this country. Furthermore, hostile governments are patently aware of the destabilizing effects such influxes may have on the "recipient countries", thereby enabling them to create a massive liability for their opposition.

DR. GEORGES FAURIOL RESPONSES TO SENATOR DECONCINI'S QUESTIONS

The question raised involves several parts: first, whether I have specific reasons to oppose S. 377; second, the question itself raises additional concerns: (a) my testimony is hypothetical; (b) it is United States policy in the first place that has generated the "refugees" now applying to come or stay in the United States—therefore, we as a nation owe them something. Starting with the last point:

1. The argument that our nation's policies create refugee flows is a tricky one that needs to be proven first if to be then used as an argument to accept Salvadorans or "refugees". There are certainly many other factors likely to generate "refugee" flows, or more broadly, emigration from the region: economic and social dislocation, insurgency, random violence, poverty, or very likely, personal or family betterment. One should be very careful when suggesting a correlation between American policy and perceived impact, and implied responsibilities of the American people. U.S. foreign policy cannot be managed on a basis of imagined guilt, or flaws correlations, which confuse legitimate responsibilities with misguided compassion.

2. There is little that is hypothetical in the testimony presented. The scenarios regarding Central America allude to a class of contingencies that we have already witnessed. The movement of people across borders does involve politics and while the American people's response has been compassionate and touching, events such as Cuba (1980), Vietnam (1975-80), Afghanistan (1979-), Ethiopia (1978-), etc . . . demonstrate how ill-prepared the international community really is. Likewise, the testimony is related to issues (Nicaragua, uncertainties in Mexico, etc . . .) which if extended just a bit further would indeed create catastrophic situations for which we are most likely unprepared. There are presently already some 250,000 Nicaraguans in Costa Rica (the bulk of them illegally). There is nothing hypothetical about these situations, but the narrow gauge of S. 377 appears oblivious to possible future developments.

3. There are three specific reasons why I question the viability of the approach suggested by S. 377:

a. Although many short term objectives of U.S. policy in the region have been achieved, long term stability remains more elusive; therefore, the United States will be involved in Central American affairs for the foreseeable future. As much of this nation's immigration and refugee policy is formed by precedent, the passage of S. 377 would suggest that we would extend it to other nations in turmoil, a scenario which has not been examined;

b. Without doubt, the situation in El Salvador has gradually improved over the past few years. However, the passage of S. 377 in my opinion, would foster an impression of both fear and apprehension toward the Salvadoran situation, which would work contrary to present U.S. objectives; and

c. In this vein, on a regional scale, an impression of fear and apprehension is clearly not one that we wish to convey. In fact, if pursued, S. 377 would undermine the very legitimacy of the government we are foremost trying to assist (Duarte's). U.S. foreign policy, quite simply, cannot operate with such blatant contradictions if it is to be respected by both the American people and the international community.

Senator SIMPSON. Thank you very much, Doctor. Obviously you did not want to hear that hideous gong go off, and it has surprised me as much as it has surprised the witnesses today. That is a very interesting machine.

Well, Mr. Bouchey, you have indicated that things in El Salvador are not the same today as they were a few years ago. And your most recent visit was a month ago, I understand. Is that correct?

Mr. BOUCHEY. Yes, for the elections. I arrived in El Salvador on March 28.

Senator SIMPSON. Could you just briefly describe, as you have had these long and extensive visits to that country over many years, just briefly, what is the general mood of the country as you perceive it?

Mr. BOUCHEY. Well, I see the mood of the country as definitely being upbeat. The elections had about a truly festive air. People were out in large numbers, young people. There was really no significant numbers of troops or police in evidence. It was a very tranquil situation. I mentioned Usulutan where there has been violence. In San Francisco Gotera, on the other hand, that is a very tense situation. Enormous damage has been done. The elections were being held in a school that has hardly any windows remaining in it. And that is an area in the eastern part of the country from which an awful lot of people have fled. And they have fled into San Salvador, some into Santa Tecla, but again I go back to the fact that there is a certain—there is an upbeat feeling, as Secretary Abrams suggests, that people are returning, returning to El Salvador, and I think that the trend lines there are very definitely positive when one looks at a wide variety of indicators.

The one trend line that still does not look too encouraging is economics because last year the economy reportedly grew by about 1.5 percent. But they have experienced a total cumulative economic decline of some 25 percent since 1979.

Senator SIMPSON. Let me ask you, many of the groups here in the United States base their arguments in favor of extended voluntary departure on statistics that were compiled by the Tutela Legal.

Could you elaborate on your impressions of the validity of those findings.

Mr. BOUCHEY. Well, in the first place, Senator Simpson, one has been able to witness what I call the human rights numbers game that has been going on in this country for the last four or so years.

Senator SIMPSON. In that country or in this country?

Mr. BOUCHEY. It has been playing in this country, what I call a human rights numbers game, a number of statistics being bandied about, statistics which, as a matter of fact, have very little basis in fact in terms of substantiation other than gross numbers.

Tutela Legal is perhaps currently the most widely cited source of information. It is considered to be credible in many sectors because of its association with the archdiocese of San Salvador.

I will state frankly that on the basis of over an hour that I spent with Maria Julia Hernandez, who is the director of Tutela Legal, I consider their allegations, their statements to be neither a credible nor reliable. In fact, some of the things that Ms. Hernandez said contradicted what the archbishop had said when I met with him, again with two members of Congress, earlier on that same day. That was on Friday the 29th.

I would be more than happy to provide this committee a detailed report on that. As a matter of fact the meeting with Ms. Hernandez was tape recorded with her understanding, with her permission, and it was interesting, if I might cite one example of what we are talking about.

Senator SIMPSON. If you could briefly, I do have to open the Senate at noon.

Mr. BOUCHEY. Ms. Hernandez talked about human rights violations, and of course, according to her, practically all of them are blamed on the Salvadoran government. She said, in her interview with us, that the army kills all of its prisoners. In fact, people at our embassy, the human rights officials at our embassy in San Salvador said that after numerous visits into the field, discussions with U. S. advisors and local officials in the countryside that they had not been able to identify a single case of prisoners being murdered.

Earlier that day, Archbishop Riera y. Damas said that he was pleased with the human rights improvement in the army, with the elimination of death squad activity associated with the army, and most of us who follow that situation believe that the so-called death squads were, in fact, an extension of the intelligence services, the intelligence branches of the military.

Archbishop Riera y. Damas specifically cited the way in which the army was taking prisoners and processing prisoners. So there is a contradiction between what Ms. Hernandez is saying and what the archbishop is saying and what our embassy is reporting, and I will be happy to provide this committee with a detailed catalog of similar things of that nature.

Senator SIMPSON. If you could, and perhaps even the transcript, if that is available.

Mr. BOUCHEY. I will be happy to Senator.

Senator SIMPSON. And then, Dr. Fauriol, you indicated in your testimony that, to preserve our tradition of granting refuge to the politically persecuted that we must prevent excessive illegal immigration.

What effect would a blanket suspension of deportation of Salvadorans have on this country's ability then to provide refuge to the truly persecuted?

Dr. FAURIOL. I think that is the very basic question, Senator, because fundamentally this country does stand for a number of ideals. Most of us are, in fact, recent immigrants to this country.

There is also, I think, a sense, on the other hand, in many regions of the world, including Central America, almost of disregard, almost of cynicism regarding the way the United States does administer its immigration laws, and it becomes really quite unfair for those that are trying to make their way through the process legally to essentially be bypassed by a large group of others from Central America presently who ultimately are, then, when here, given the benefit of the doubt and, in fact, brought into a system by which they will, in fact, be sometimes over the long run encouraged to come to the United States.

I think is is a very difficult process.

Senator SIMPSON. You mention, too, that Central American countries are experiencing very serious development and population problems, and that is obvious in every study from any source, and that those, then, are often solved by outmigration. In fact, governments, in a very subtle way, are encouraging that in many instances.

Is it at all accurate to state that suspension of deportation would not increase migration from El Salvador in view of the documented development and population problems in that country?

Dr. FAURIOL. I am sorry, sir. I am not quite sure I understand the question.

Senator SIMPSON. Is it at all accurate to state that suspension of deportation would not increase migration from El Salvador in view of the development and population problems in that country?

Dr. FAURIOL. Well, El Salvador has a very serious population problem, and in fact, I think it is, to some extent, one of the causes for an outflow of population from not only El Salvador but the region, and that is often unrelated to other events, including political and security events occurring in that country.

Senator **Simpson**. But, as I say, if we were to do this act under this bill, it would seem to me at least that that would increase migration from El Salvador, I guess that is what I am saying.

Dr. **Fauriol**. That is correct. It is an open invitation.

Senator **Simpson**. An open invitation you say.

You mention the long-term objectives in Central America are economic progress and social and political stability, and that is a good phrase that fits every country on earth that we hope will take our lead.

Are these objectives encouraged or hindered by programs that would suspend the deportation of nationals from El Salvador?

Dr. **Fauriol**. I think it is perhaps difficult to answer the question. I was proposing that we address the broader issues of the region on the basis of those ideals in part because ultimately proximity is important and Central America is important to the United States.

I think unless we are clear as to where we want to see the region go within the next 15 or 20 years, then tinkering with short-term immigration and refugee type laws is not going to help ultimately the development of Central America. That is not the solution.

Senator **Simpson**. I am intrigued by your warning that the granting of blank immigration status exposes us to hostile groups or governments, and I am reminded particularly of the Mariel experience with Cuba.

What might some of the potentially detrimental effects be in the case of El Salvador?

Dr. **Fauriol**. I was raising the issue indirectly in connection with El Salvador. Let us assume for a moment that a series of Marxist regimes do take place in Central America, governments that are going to be quite hostile to perhaps the interests of the United States in the region, and in view of the experience both in Cuba as well as even of the Vietnamese Government experience in the late 1970s, I think it would be not hard to imagine a similar scenario being generated among any of the Central American countries if those countries were to be governed by nations essentially hostile to the United States.

I think the Cuban and the Vietnamese examples tend to suggest that it is at least reasonable, plausible that something like that could happen.

Senator **Simpson**. I want to thank both of you, and I am going to defer to Senator Grassley, who has a question or two and he will conclude the hearing. I thank you for your appearance here. It has been very helpful to us, and I apologize that I must be on my way.

Senator **Grassley**. Thank you, Mr. Chairman.

I missed the testimony of panel 1 and panel 2, and if there was any reference to what I am going to ask about, I would like to have at least panel 2, I would be particularly interested in knowning their views on it that they might want to submit in writing to me.

But I have thought that in regard to El Salvador our policy toward that country of establishing a participatory form of government has been fairly consistent, both under Carter and now under Reagan but it has still been in transition to reach that goal.

I wonder from the standpoint of where both of you come from in your testimony if, since we are still in a transition there to reach economic and political stability, if there is not a justification until that stability is reached, and I do not know whether that is 1 year down the road or 2 or 3 years down the road. Hopefully with the results of the recent election and efforts on Duarte's part to negotiate with people who did not participate in the election that those will be successful.

Is there not a reason to look aside while we are in this transition period until there is economic and political stability that we seek there while these refugees, be they economic or political, are in this country? I would like to have your comments on that.

Mr. BOUCHEY. In the first instance, I think that these people can be adequately accommodated perhaps through the expenditure of additional dollars within El Salvador. Second, I believe that an ongoing outflow or the acceptance of a group of people here in the United States sends a signal that we are not that confident in the stabilization process, political, economic and otherwise, that is going on in El Salvador.

I think that this problem is fundamentally a symptom of the larger question which has been the ability of the communist guerrillas to depacify, if you will, the countryside. That the pacification of the countryside is the important thing that needs to move forward, and I think that by people remaining there, this provides a certain psychological impetus for the movement forward of that program.

Senator GRASSLEY. Before you answer, on your second point, the extent to which we bring so much publicity to the situation of the refugees who are in this country from El Salvador and bring public note to it, then that does create those problems that would not otherwise be there.

I am just saying, while we are in this process of evolution within El Salvador for more stability and without that note, is it any big problem in regard to that we might encourage people to come into this country, who we would not otherwise want to come?

And it seems to me it is that public note, that we bring to it is the problem.

Mr. BOUCHEY. I think you make a valid point, and it seems to me that perhaps the better way to proceed is to proceed slowly. We saw on the charts earlier today that there are a good number of people being processed, that the whole procedure is relatively slow, and it seems to me that substantial progress is being made in El Salvador.

However, let me add, that I think the progress toward democracy development in El Salvador is ultimately going to be related to the settlement of the contest going on in neighboring Nicaragua.

Senator GRASSLEY. Dr. Fauriol, do you have any comment on my question?

Dr. FAURIOL. I would simply add, that I think there is almost a psychological relationship between, on the one hand, generating policies designed to assist in the political reconstruction of the nation, as well as sustaining an economic recovery, and on the other hand, almost inviting large populations from the same country to come to the United States on a temporary basis.

I do not think that major outflows of populations from El Salvador are going to help the nation's development, political process or, for that matter, its fight against an insurgency.

It is a temporary measure, and I do not think it really ultimately addresses the fundamental issues that we do face now.

Senator **Grassley**. In closing I think it is usual, at least in my subcommittee, that the record stays open for a period of time, 1 week, for additions or corrections, and to answer specific questions from members who cannot be here.

So with that announcement, I call the meeting to a close and thank you as the last panel for your participation.

[Whereupon, at 11:59 a.m., the subcommittee adjourned at the call of the chair.]

APPENDIX

STATEMENT OF SENATOR EDWARD M. KENNEDY AT A SUBCOMMITTEE HEARING ON GRANTING SAFE-HAVEN TO SALVADORAN REFUGEES

For Immediate Release
Monday, April 22, 1985

I want to commend you for calling this important hearing this morning, to deal with the complex and difficult issue of refugees from Central America -- particularly from El Salvador and Guatemala -- who are seeking safe-haven in the United States from the violence and conflict in their homelands.

As you know, I have long favored granting safe-haven -- or what we legally call "extended voluntary departure" -- to those persons from El Salvador and other countries, such as Poland, Ethiopia, and Uganda, who fear for their lives if they return to their home countries at this time. We have historically granted this status to Lebanese, Nicaraguans, and other nationalities before them. Yet, we continue to refuse to do so for Salvadorans or Guatemalans, who surely have as well-founded a fear of returning to the violence in their homelands as did the Lebanese or as Ugandan nationals do today.

It is a cruel and discriminatory policy of this Administration to refuse, even on a case-by-case basis, to acknowledge that many Salvadorans in exclusion or deportation proceedings are truly fearful of returning to their country at this time. Over the years, the discretionary authority of "extended voluntary departure" has been used to deal with such cases. But this Administration has turned its back upon this humanitarian tradition and has refused to use the authorities of law at its command to deal in a humane way with the plight of many Salvadorans and Guatemalans who have come to our country seeking a safe-haven.

I believe we need to be far more flexible in our administration of the Immigration and Nationality Act. We need to at least consider the pleas of Salvadorans when they say they fear for their lives if they return. We do so for Polish nationals, wny not for Salvadorans?

I recognize that there has also been a long history of migration from El Salvador to the United States for economic reasons. But that should not deter us from granting, on a case-by-case basis, extended voluntary departure to those Salvadorans or Guatemalans -- or Poles or Ethiopians -- who say, with considerable justification, that they fear returning to their homes at this time, given the conditions in their native lands.

They may not be eligible for asylum, or be able to meet the tough refugee standard -- which is properly a strict one -- but they may nonetheless be deserving of safe-haven. Over the years, we have developed "extended voluntary departure" as a "safe-haven" concept, a status between granting asylum and forcing deportation. If the Administration now believes this will require new statutory authority -- a legal definition of "safe-haven" -- then I, for one, am prepared to introduce the necessary legislation.

But until then, I would hope that the Administration would begin to show some flexibility and humanity in dealing with the pleas of many Salvadorans and Guatemalans, who may not qualify for asylum, but who are clearly deserving of temporary safe-haven.

ARLEN SPECTER
PENNSYLVANIA

COMMITTEES
JUDICIARY
APPROPRIATIONS
VETERANS AFFAIRS

United States Senate
WASHINGTON, DC 20510

Honorable Alan C. Nelson
Commissioner
Immigration and Naturalization Service
425 I Street, N.W.
Washington, D.C. 20536

Dear Commissioner Nelson:

I am deeply concerned about the policy and procedures involved in the recent arrest of some 60 aliens across the country and particularly about the arrest of a Guatemalan family in Philadelphia, Pennsylvania on January 14, 1985.

According to information provided to me, a warrant of arrest was issued for a husband and wife, Mr. and Mrs. Morelos, on grounds of illegal entry. The wife and a three-year-old child were then taken into custody. Later, Mr. Morelos surrendered to Immigration and Naturalization authorities when he found out that his wife and child were in custody.

On the facts as presented to me, Mr. Morelos has a valid claim for asylum on the basis of a well-founded fear of persecution based on his prior political activities and expressions of political opinions in Guatemala. Mr. Morelos' contention of torture was corroborated by scars which I personally observed on his body.

When I discussed this case with an INS agent in Philadelphia, I was advised that a warrant of arrest was issued because Mr. Morelos had not made an application for asylum.

In my judgment, a law enforcement agency like INS should not issue a warrant of arrest for a person until an investigation discloses a violation of law without a valid defense. As District Attorney of Philadelphia, I made it a stringent rule to inquire as to the surrounding circumstances to find out about potential defenses before obtaining warrants of arrest or taking people into custody.

As a matter of fundamental fairness, it is my opinion that the Government of the United States should not take people into custody unless there is a valid basis for doing so after a thorough investigation including potential defenses. It seems to me that it is not sufficient to justify the INS action on the basis that Mr. Morelos had the burden of filing an application for asylum. He is an alien and does not really understand the intricacies of the law; and, if he did, he could hardly be expected to file such an application considering the fact that virtually no such applications are granted and the filing itself would doubtless activate an enforcement proceeding against him.

The action of the Immigration and Naturalization Service was particularly offensive in taking his wife and child into custody. It is an horrendous experience to be arrested and the three-year-old child who was subjected to the arrest will doubtless bear the scars of the incident for many years, to say nothing of the trauma on the mother.

I strongly urge that you as the Director of the Immigration and Naturalization Service review your procedures so that legal proceedings are authorized only where an investigation discloses a violation without a valid defense. If legal proceedings are instituted, a summons rather than a warrant of arrest should be used unless there is a valid reason to believe that the person will flee or that bail is realistically necessary to guarantee the appearance of that individual at the next proceeding. In the case of the Morelos family, there was no such reason to be concerned about flight since the Immigration and Naturalization Service had known of their whereabouts since September 1984. In any event, the posting of the $3,000 in bail by other parties was hardly any guarantee of the appearance of the Morelos family for the next proceeding so that the justification for the warrant of arrest was not at all well-founded.

As to the filing of asylum petitions, I urge you to adopt procedures which maintain confidentiality (in camera proceedings) so that foreign governments will not know of the contentions of their nationals so as to avoid reprisals and fear of filing such applications.

Beyond these procedures, I am also troubled by the applicable policies which, as I understand it, lead to only 0.4 percent of Guatemalan applications for asylum having beeng granted in 1984 and only 2.5 percent of the applications for asylum from Salvadorans having been granted in 1984. In light of the social unrest in those countries and the activism of many of their citizens, it strikes me as a shockingly low figure to have such a small number of applications for asylum granted. I would be interested to know what standards are used and whether Mr. Morelos would have qualified, under existing standards, considering his contentions of torture which were corroborated by his scars.

I would be further interested to know whether consideration has been given to halting deportations of Guatemalans through a grant of extended voluntary departure or any other procedure. It seems to me that extended voluntary departure would be appropriate for Guatemalans as it has been applied for those who have fled from other countries with such pervasive social unrest affecting so large a segment of the citizens.

I would very much appreciate your prompt response to the questions raised in this letter.

Sincerely,

Arlen Specter

Arlen Specter

AS:sfl

COMMITTEES
JUDICIARY
APPROPRIATIONS
VETERANS AFFAIRS

United States Senate
WASHINGTON DC 20510

Honorable George P. Shultz
Secretary
Department of State
2201 C Street, N.W.
Washington, D.C. 20520

Dear Secretary Shultz:

I am deeply concerned about the policy and procedures involved in the recent arrest of some 60 aliens across the country and particularly about the arrest of a Guatemalan family in Philadelphia, Pennsylvania on January 14, 1985. While the arrests were carried out by the Immigration and Naturalization Service, the procedures employed are inexorably intertwined with our immigration policies in which the State Department plays a key role.

According to information provided to me, a warrant of arrest was issued for a husband and wife, Mr. and Mrs. Morelos, on grounds of illegal entry. The wife and a three-year-old child were then taken into custody. Later, Mr. Morelos surrendered to Immigration and Naturalization authorities when he found out that his wife and child were in custody.

On the facts as presented to me, Mr. Morelos has a valid claim for asylum on the basis of a well-founded fear of persecution based on his prior political activities and expressions of political opinions in Guatemala. Mr. Morelos' contention of torture was corroborated by scars which I personally observed on his body.

When I discussed this case with an INS agent in Philadelphia, I was advised that a warrant of arrest was issued because Mr. Morelos had not made an application for asylum.

In my judgment, as I have written INS Commissioner Alan Nelson, a law enforcement agency like INS should not issue a warrant of arrest for a person until an investigation discloses a violation of law without a valid defense. As District Attorney of Philadelphia, I have made it a stringent rule to inquire as to the surrounding circumstances to find out about potential defenses before obtaining warrants of arrest or taking people into custody.

As a matter of fundamental fairness, it is my opinion that the Government of the United States should not take people into custody unless there is a valid basis for doing so after a thorough investigation including potential defenses. It seems to me that it is not sufficient to justify the INS action on the basis that Mr. Morelos had the burden of filing an application for asylum. He is an alien and does not really understand the intricacies of the law; and, if he did, he could hardly be expected to file such an application considering the fact that virtually no such applications are granted and the filing itself would doubtless activate an enforcement proceeding against him.

This is where the State Department's involvement is particularly relevant. I am troubled by the applicable policies which, as I understand it, lead to only 0.4 percent of Guatemalan applications for asylum having been granted in 1984 and only 2.5 percent of the applications for asylum from Salvadorans having been granted in 1984. In light of the social unrest in those countries and the activism of many of their citizens, it strikes me as a shockingly low figure to have such a small number of applications for asylum granted. I would be interested to know what standards are used in the State Department's review of applications and whether Mr. Morelos would have qualified, under existing standards, considering his contentions of torture which were corroborated by his scars.

In addition, I urge you to work with Commissioner Nelson to adopt procedures that maintain the confidentiality of asylum applications (in camera proceedings), so that foreign governments will not know of the contentions of their nationals so as to avoid reprisals and fear of filing such applications.

I would be further interested to know whether consideration has been given to halting deportations of Guatemalans through a grant of extended voluntary departure or any other procedure. It seems to me that extended voluntary departure would be appropriate for Guatemalans as it has been applied for those who have fled from other countries with such pervasive social unrest affecting so large a segment of the citizens.

I would very much appreciate your prompt response to the questions raised in this letter.

Sincerely,

Arlen Specter

Arlen Specter

AS:ssl

ARLEN SPECTER
PENNSYLVANIA

COMMITTEES
JUDICIARY
APPROPRIATIONS
VETERANS' AFFAIRS
INTELLIGENCE

United States Senate
WASHINGTON, DC 20510

April 4, 1985

Honorable Charles A. Bowsher
Comptroller General
General Accounting Office
Washington, D.C. 20548

Dear Mr. Bowsher:

I am writing to request a GAO study into the practices and procedures of the Immigration and Naturalization Service and the Department of State for judging claims for asylum in the United States, especially concerning Central America.

The civil strife in Central America has displaced thousands of inhabitants. In visits to Central America in May and August of 1983, I witnessed first-hand the breakdown of justice in El Salvador, and when I returned I succeeded in getting the Congress to withhold 30% of our aid to that country until the guardsmen charged with the murder of the four churchwomen were tried. In addition, I have seen to it that $9 million in aid was earmarked for judicial reform in El Salvador so that the rule of law can begin to replace the reign of terror perpetuated by rampant illegal killings.

It is essential that we treat the displaced victims of the civil strife in Central America fairly and with compassion. I was an original cosponsor of legislation to halt the deportation of Salvadorans pending a study of the circumstances and condition of displaced Salvadorans in Central America and here in the U.S. I have cosponsored this legislation again in the 99th Congress.

I am also deeply concerned about the policy and procedures involved in the arrests of some 60 displaced aliens -- mostly Salvadorans and Guatemalans -- across the country earlier this year in an effort to crack down on the Sanctuary movement, and particularly about the arrest of a Guatemalan family in Philadelphia on January 14, 1985. I have written Secretary of State George Shultz and Immigration and Naturalization Commissioner Alan Nelson complaining about these arrests and the fundamental offensiveness of taking a Guatemalan mother and her three-year-old child into custody, as was done in Philadelphia.

I have also requested Senate hearings on the issues raised by the INS arrests, and Senator Simpson, Chairman of the Judiciary Subcommittee on Immigration and Refugee Policy, has agreed to schedule such hearings in the near future.

I met with the Guatemalan family arrested in Philadelphia in January -- and, on the facts as represented to me, the father, Mr. Morelos, has a valid claim for asylum on the basis of a well-founded fear of persecution based on his prior political activities and expressions of political opinions in Guatemala. Mr. Morelos' contention of torture was corroborated by scars which I personally observed on his body.

I am troubled by the applicable policies which, as I understand it, lead to only 0.4 percent of Guatemalan applications for asylum having been granted in 1984 and only 2.5 percent of the applications for asylum from Salvadorans having been granted in 1984. In light of the social unrest in those countries and the activism of many of their citizens, it strikes me as a shockingly low figure to have such a small number of applications for asylum granted.

On March 14, 1985, I questioned Elliott Abrams, Assistant Secretary of State for Human Rights and Humanitarian Affairs, about this remarkably low approval rate in 1984 for asylum applications filed by Salvadorans and Guatemalans, and whether it could reflect an appropriate application of a fair standard. Mr. Abrams suggested that a GAO study of the asylum process would be "a good idea."

I am attaching a list of specific areas the GAO report should cover. This kind of thorough analysis is long overdue.

If you have any questions, please contact me, or have your staff contact Suzanne Spaulding at 224-5863.

I appreciate your prompt consideration of this request.

Sincerely,

Arlen Specter

Arlen Specter

AS:ssl
Enclosure

Specifically, I request that the GAO report include the following information:

1. The standard and criteria being applied by INS in granting claims of asylum;

2. Whether the same standard and criteria is applied across the board to asylum applications regardless of the home country of the applicant; if not, please examine and report the differences and reasons for deviance;

3. Whether the approval rate for asylum applications generally and/or by country varies significantly from one INS district office to another, and the reasons for any such variation;

4. The standard and criteria applied by the State Department in recommending approval or denial of asylum applications;

5. Whether the same standard and criteria is applied by the State Department to all applications, regardless of the home country of the applicant, and is applied in the same manner, e.g., same requirements for corroboration and objective evidence, same criteria for severity of threat, etc., and the nature of and reasons for divergence; and

6. Whether the same procedures are consistently followed within the State Department and the INS, respectively, when considering all asylum applications. If not, describe circumstances under which procedures vary and cite the nature of and reasons for divergence.

United States Department of State

Washington, D.C. 20520

MAR - 8 1985

Dear Senator Specter:

Thank you for your letter of January 18, 1985 in which you state your deep concern about the arrests of illegal aliens on January 14, 1985. You inquire about asylum procedures, the granting of extended voluntary departure to Guatemalan and Salvadoran aliens in this country, and you refer to the "sanctuary" movement as the target for arrests.

We realize that violence is an enormous problem in Central America, and that many have fled their country to avoid civil strife. There is also a long history of migration to the United States by aliens seeking work. Many try to remain here by applying for asylum or seeking extended voluntary departure (EVD) status, which temporarily suspends deportation.

The reason most often cited for granting EVD to Salvadorans, or any other Central American, is the claim that those who have been deported have suffered persecution on return to their country. However, repeated studies of the treatment and condition of deported Salvadorans have disclosed no such pattern. In the most recent U.S. Embassy survey of about 500 El Salvadoran deportees, not a single case of physical abuse or murder was found. Many deportees could not be located because they had given fictitious or incomplete addresses, and some 39 people had already returned illegally to the United States. Despite the problem in locating some deportees, the study simply does not suggest a pattern of targeted persecution of the deported Salvadorans.

In 1983 the Attorney General and the Secretary of State carefully considered the question of EVD status for Central American aliens and determined that such status was not then appropriate. Their views are still valid at this time and I enclose copies of their letters.

In addition, there is a program in place in El Salvador, conducted by the Intergovernmental Committee for Migration (ICM), a highly respected international organization. ICM meets every Salvadoran who has been sent home by the United States, and each is offered resettlement assistance. Each returnee reports to ICM once a month for six months, discussing any difficulties which he or she may have. If any returnees had been harmed or disappeared, it surely would be made known publicly.

The Honorable
Arlen Specter,
United States Senate.

Our international commitments do not permit the forced expulsion of a refugee to a country or frontier where persecution is likely to occur. In addition, the Refugee Act of 1980 provides for the granting of asylum status to those who establish a well-founded fear of persecution upon return to their country of nationality for reasons of race, religion, nationality, membership of a particular social group, or political opinion. By law, the responsibility for establishing a well-founded fear of persecution rests with each applicant. The Department of State reviews each and every asylum application and renders an advisory opinion on the merits of the application. However, the decision on the asylum request is made by the I.N.S. director concerned who takes into consideration our advisory opinion. Since the decision on the asylum application is a matter for I.N.S., you may wish to consult with that Service to ascertain the statistical data on these cases.

The United States is well aware of its legal and treaty obligations and responsibilities, including the prohibition against the forced expulsion of refugees. We have a long-standing record of support for relief activities on behalf of refugees and a generous resettlement policy. No other country has provided as much assistance, or as many resettlement opportunities, to refugees as the United States.

We cannot concur with the position taken by some churches to harbor or conceal illegal aliens from Central America or elsewhere. Our conduct in this matter should be guided by the rule of law. Since the question of harboring or concealing illegal aliens may involve a breach of federal law, you may also wish to consider requesting the Department of Justice to comment on the implications of the actions.

We will continue our careful review of applications for EVD and asylum on a case-by-case basis, and monitor developments and conditions in the region. This is not always an easy task. However, the procedures for a considered and just determination of EVD and asylum request for Central Americans are in place, and they are applied by our officers in a compassionate and understanding manner.

Sincerely,

J Edward Fox

J. Edward Fox
Acting Assistant Secretary
Legislative and Intergovernmental Affairs

Enclosures:
As stated.

United States Department of State

Washington, D.C. 20520

MAR 1 - 1985

Dear Senator Specter:

Thank you for your letter of February 1, 1985 expressing your deep concern about the arrests of some 60 illegal aliens and in particular about the arrest of a Guatemalan family in Philadelphia, Mr. and Mrs. Morelos and their child.

We note in your letter your belief that Mr. Morelos has a valid claim for asylum based on a well-founded fear of persecution because of his prior political activities and opinions in Guatemala. You also urge us to work with I.N.S. Commissioner Nelson to adopt procedures that maintain the confidentiality of asylum applications.

The Department keeps the contents and its views on asylum applications confidential in order to protect the applicant or his relatives. Attorneys for asylum applicants are particularly insistent upon the need for strict confidentiality, and we must maintain this policy. We are confident that the I.N.S. maintains a similar policy.

With respect to the asylum claim by Mr. Morelos and his family, we will be prepared to review the case when the record and file are sent to us by I.N.S. Philadelphia, in accordance with established procedures in these matters. You may be assured that at such time we will take fully into account your views on the validity of the asylum request. However, since we have not had an opportunity to review the application and any supporting documents, we are not in a position to comment on the merits of the case.

The Honorable
Arlen Specter,
United States Senate.

We will continue our careful review of applications for asylum on a case-by-case basis, and monitor developments and conditions in the region. This is not always an easy task. However, the procedures for a considered and just determination of asylum requests for Central Americans are in place, and they are applied by our officers in a compassionate and understanding manner.

Sincerely,

J. Edward Fox
Acting Assistant Secretary
Legislative and Intergovernmental Affairs

TESTIMONY OF MICHAEL S. TEITELBAUM
PRESENTED TO SUBCOMMITTEE ON
IMMIGRATION AND REFUGEE POLICY
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

Mr. Chairman, Ladies and Gentlemen:

I am Michael S. Teitelbaum, Program Officer at the Alfred P. Sloan Foundation in New York. I have been asked by this committee to comment, in my personal capacity, on proposed legislation requiring "suspension of deportation" (or other forms of temporary refuge such as "extended voluntary departure") for all citizens of El Salvador who are currently in the United States in violation of the Immigration and Nationality Act.

Ambiguity and Confusion

The first thing that can be said about the subject of such temporary status is that it is full of ambiguity and confusion. An excellent summary of these confusions is provided by a recent Congressional Research Service report[1] which notes that there are at least three forms of discretionary procedure that allow aliens unlawfully present in the U.S. to remain either temporarily or permanently:

(1) stay of deportation;

(2) deferred departure or deferred action; and

(3) extended voluntary departure.

The first two are described under INS regulations or operating instructions, but extended voluntary departure has "not been formally defined and appears to be evolving". There is also a fourth category, so-called "parole", which is another discretionary procedure formerly employed to admit thousands of individuals under group designations, but that is now restricted to case-by-case use under the terms of the Refugee Act of 1980. One of the standard reference sources on immigration law notes that the term "parole" is "nowhere defined" and "is a device of wide flexibility".[2]

In the past, all of these administrative actions have been employed rather interchangeably, to the point that the CRS study notes uncertainty as to how many such blanket actions have been taken, affecting how many people. Advocates (pro and con) on the subject have used the various approaches equally loosely and interchangeably. Thus legislative and administrative ambiguity clouds the subject, contributing to a high level of confusion among proponents, opponents and observers alike.

There is also substantial confusion surrounding the specific case of citizens of El Salvador. For example, one of the principal sponsors of the pending legislation requiring suspension of deportation describes all Salvadoran nationals currently in the United States as "refugees" who "face uncertain futures if sent back to their homeland", and therefore needing suspension of deportation.[3] Meanwhile, other proponents of the same legislation, such as the American Civil Liberties Union, believes that most Salvadorans in the United States will not qualify as refugees, and it is for this reason that they require suspension of deportation.[4] If such ambiguity as to the status and entitlements of Salvadorans afflicts those advocating the proposed legislation, it is hardly surprising that journalists and others reporting on the debate are afflicted with similar confusions.

Unusual Aspects of the Salvadoran Situation

There are several aspects of the current circumstances of Salvadorans unlawfully in the United States that are unusual and worthy of consideration.

First, an area of rare agreement among otherwise disputatious advocates: everyone agrees that there is a long history of immigration by Salvadorans to the United States that precedes by decades the recent civil war and internal violence, and that much of this migration was in violation of the Immigration and Nationality Act. This means that there are now well-established networks of communication and transportation for additional prospective migrants from El Salvador to the United States, and in this respect Salvadoran migration to the United States is similar to that from Mexico, Colombia, the Dominican Republic, and a few other countries.

More generally, Salvadorans have long been the outmigrants par excellence of Central America; indeed the 1969 Soccer War between El Salvador and neighboring Honduras was caused substantially by the gradual unlawful immigration of Salvadorans into Honduran territory, with its superior economic circumstances and more readily available land. As recently as 1978, the government of El Salvador was exploring bilateral treaties with countries such as Bolivia and Saudia Arabia to facilitate the accelerated outmigration of Salvadoran nationals.[5]

Second, unlike circumstances in many countries offering temporary refuge (such as Thailand with its refugee camps, Austria with its temporary refugees, etc.) there apparently are no third countries prepared to offer permanent resettlement to large numbers of Salvadoran nationals given temporary refuge in the United States (see discussion, below). In this regard, it is worth noting that both Thailand and Austria have insisted on the promise of such third country resettlement before offering even temporary status to most would-be refugees. A principal third country for permanent resettlement in both cases has been the United States.

Third, most countries of temporary refuge have maintained "camps" or other facilities, in which those claiming temporary status were either required or compelled by necessity to use. In the case of Thailand, residence in such refugee camps is essentially mandatory. In the case of Austria, most would-be refugees claiming temporary refuge are offered room and board in special facilities, but not work authorization or residence permits. To my knowledge, none of those proposing temporary refuge for Salvadorans are urging the establishment of such facilities but instead wish that all Salvadorans be authorized to reside and work in the United States, like any other legal migrant. Given this, the economic and other incentives for such migration are much higher than in a temporary status in other countries, since the differential in prevailing wages between a highly industrialized country such as the United States and a poor developing country such as El Salvador are very large indeed. As but one indicator of the magnitudes involved, consider that U.S. GNP per capita in 1982 was $13,160, versus $700 in El Salvador, i.e. 95% lower than the U.S. level. (Comparable figures for Mexico were $2,270, and for Haiti $300; unfortunately, similar data are not available for Vietnam, Poland, and other relevant countries.)[6]

Mr. Chairman, may I ask that you place yourself for a moment in the position of a Salvadoran who has left El Salvador for political, economic, or family reasons and currently resides and works in the high wage U.S. economy. If the civil war and general violence in El Salvador were to recede, would you readily return to economic conditions that are so much less attractive? I, for one, would not, and I sympathize with those who would make the same decision in the interest of their own and their families' econonic welfare. But this illustrates well the dilemma of granting unfettered access to a high-wage labor market to people from low-wage countries, even if notionally for temporary periods. Similar problems of reluctance to return characterized Western European experience with "guest workers" from Turkey and other Meditteranean countries, even though the economic differentials in those cases were smaller than those between El Salvador and the United States.

Obviously, it is not possible for the United States unilaterally to change the history and networks of immigration that have long prevailed between El Salvador and the United States, and so the existence of well-established migration pathways must be taken as given. However, it is fair to ask whether it is possible to encourage other countries to offer permanent resettlement of Salvadoran migrants. In this respect, much depends upon the numbers involved. Small numbers of such migrants could presumably be resettled in certain European countries such as Sweden, Spain, etc., but for the large numbers of Salvadoran migrants involved (300-500,000 in the U.S. according to conventional guesses), countries seeking large-scale population flows would have to be identified. Traditional Latin American labor-importers such as Argentina come to mind, except for that country's long-standing preference for migrants from Europe. Guyana is another possibility, although the political circumstances there are less than attractive. Finally, Belize might be a possibility were it not for the obvious reluctance in that country to see large-scale in-movement of Spanish-speaking migrants. In short, no obvious country prepared to consider large-scale permanent resettlement of Salvadorans comes immediately to mind, though it is worth further investigation.

Finally, if we are serious in arguing that suspension of deportation for Salvadorans in the United States is intended solely to protect them from immediate physical danger, are we prepared to consider offering facilities to such migrants that do provide such protection, without at the same time offering them large economic incentives favoring permanent residence? Such facilities could be modeled after those in Austria if they were to be located in the United States, or could be developed with U.S. financial support in countries neighboring El Salvador with the agreement of the governments involved. It would be interesting to know whether those arguing in support of extended voluntary departure or suspension of deportation for all Salvadorans would be supportive of such protective facilities as distinct from unencumbered residence and work authorization.

Open Questions: One question for which I do not have any answers to offer is of critical significance in this debate: What is the threat to life of persons returned to El Salvador?

My reading on this subject suggests that there is profound disagreement among those claiming first-hand knowledge. Proponents of temporary refuge for Salvadorans claim that the risk is high. Opponents say it is low, or at least no higher than for the bulk of the Salvadoran population who have chosen to stay in the country rather than depart.

My own guess, based alas on no firsthand knowledge, is that in a sense both of these extreme views are correct for some people. Clearly there are some Salvadorans who have experienced a direct threat to their lives or freedom from one or another of the various violent political forces within that country. Such people are most likely to have been active politically or otherwise visible. On the other hand, those with no such political visibility seem unlikely to experience any greater risk than Salvadorans with similar attributes who continue to live in El Salvador. This is not to dismiss lightly the risk to anyone from random violence or a civil war in a country such as El Salvador.

The fact that some Salvadorans do seem to be at risk based upon their political activities or other characteristics implies that there is some (unknown) number of bona fide refugees or asylees among the Salvadoran population currently in the United States. Petitions for asylum filed by such persons under the Refugee Act of 1980 should receive an impeccably fair and humane review. There is nothing about the granting of asylum to a Salvadoran national that should in any way embarrass or compromise the government of El Salvador, which surely recognizes its inability to control violent forces of the left and right.

Moreover, such foreign policy considerations have no place in the asylum adjudication process, which is and should be a fundamentally humanitarian matter. Critics of the U.S. government's posture towards Salvadoran migrants contend that such foreign policy considerations have motivated asylum determinations by the State Department. I have no way of assessing the validity of such assertions. If there is any truth to them, procedures must immediately be modified to exclude such considerations and to reflect a balanced and humane perspective.

On the other hand, it would be highly regrettable if advocacy of temporary refuge or political asylum for Salvadorans is seen as a means to oppose American foreign policy in Central America. It is a credit to the honesty of some proponents that they do not mince words on this subject, stating quite openly that their campaign for political asylum for Salvadorans is closely tied to their political opposition to American support for the Government of El Salvador.[7] In the use of such methods, they are at one with those on the political right who advocate admission of refugees from Communist countries as part of their anti-Communist campaign. For example, the leader of one anti-Communist coalition put the matter this way recently:

> The State Department is "selling out" defectors from communist countries and deporting them back to face human-rights persecution, concentration-slave labor camps, imprisonment and perhaps even death.[8]

In my view, such uses of Salvadoran (or other) nationals in the United States for foreign policy objectives are regrettable and should be avoided.

Possibility of Truly "Temporary" Status for Salvadorans: whether the formal granting of temporary refuge for all Salvadoran nationals in the United States could be sustained as temporary is an open question. In this regard, it is instructive to review 13 other cases in which such such "temporary" status has been granted, and to assess the extent to which they have proved to be temporary. These cases, categorized in three groups, are presented below:[9]

(1) Cases of "temporary" refuge eventually converted to permanent residence:

- Vietnam (temporary refuge in 1975);
- Cuba (temporary refuge in 1960);
- Cambodia (temporary refuge in 1975);
- Iran (temporary refuge in 1979; most converted to permanent status via asylum claims);
- Laos (temporary refuge in 1975).

(2) Cases in which "temporary" statuses were terminated, and their length:

- Chile (6 years, beginning in 1971);
- Czechoslovakia (9 years, beginning in 1968); - Dominican Republic (12 years, beginning in 1966);
- Nicaragua (1 year, beginning in 1979; many currently claiming political asylum).

(3) Cases in which "temporary" status was granted and is still in effect:

- Ethiopia (continuing, beginning in 1977);
- Uganda (continuing, beginning in 1978);

- Afghanistan (continuing, beginning in 1980);
- Poland (continuing, beginning in 1981).

As can be seen from the above listing, there are few cases in which a granting of "temporary" refuge led to a short stay of a year or two. Most resulted in long-term or permanent residence. Thus the various forms of "temporary" refuge, under recent U.S. experience, appear to have become a backdoor means of long-term or permanent admission for would-be immigrants or refugees. In this respect, such temporary status may be viewed as attractive means of circumventing the provisions of the Immigration and Nationality Act and its associated Refugee Act of 1980.

To the extent that proposals for temporary refuge for all Salvadorans unlawfully in the United States are motivated by genuine humanitarian concern for those involved, they deserve our admiration. Assuming that such concern, rather than a foreign policy agenda, is the motivating force, may I suggest two further avenues that might be more effective in providing protection to those Salvadorans who are directly threatened.

First, it would be highly desirable in humanitarian terms if Mexico and all other countries in Central America were to accede to the long-established international conventions on refugees, the 1951 Convention relating to the Status of Refugees and its 1967 Protocol. It is this international agreement that provides the principal international protections for bona fide refugees. More than 90 nations, including the United States, are signatories. It is surprising that countries such as Mexico, with their longstanding traditions of political asylum and their avowed humanitarian concerns, are not among them. To the extent that proponents of temporary refuge for Salvadorans in the United States have any influence with governments, churches and other groups in Mexico and Central America, they would do a great service in urging that consideration be given to these important international instruments of humanitarian concern.

To those whose interest in Salvadoran migrants is principally driven by opposition to U.S. foreign policy in Central America, I would urge that they consider focussing their attention directly on the foreign policy issues themselves, e.g. funding for the "Contras", economic and military assistance for the government of El Salvador, economic pressures on the government of Nicaragua. The use of the "refugee" designation for foreign policy purposes has a long history in the United States, as evidenced by the Cold War definition of the "refugee" that prevailed in U.S. law until passage of the Refugee Act of 1980, and by the selective admissions for migrants from countries such as Cuba that have been the policy of administrations of both parties, including most recently the Carter Administration during the Mariel boatlift of 1980. The intention of the Refugee Act of 1980 was to stop such ideological uses of the "refugee" designation, to reserve it for those of all countries and ideologies who meet its clearly humanitarian definition. In my view, this represented a major advance in American law. It was dealt a serious blow by actions of government in 1980, and now is further imperiled by those who for reasons of ideological or foreign policy perspective are advocating a new form of "quasi-refugee" for those leaving the troubled region of Central America.

At best, such an approach is a blunt instrument for promoting foreign policies, however well-intended they may be. Moreover, it is a double-edged one, since it can also be employed by those promoting quite opposite foreign policies, as indeed it had been before the Refugee Act of 1980.

At worst, such a strategy, however well-intentioned, carries with it the risk of doing serious damage to an important element of U.S. human rights policy on which advances have only recently been achieved. On this, Mr. Chairman, may I quote an old and wise comment (one that I confess I had always attributed to Dante, but which my library source says is from none other than Karl Marx): "The road to Hell is paved with good intentions."

FOOTNOTES

[1] Congressional Research Service, Education and Public Welfare Division, "Extended Voluntary Departure and Other Grants of Blanket Relief from Deportation", February 23, 1985.

[2] Charles Gordon and Harry N. Rosenfield, Immigration Law and Procedure, Vol. 1A, (New York: updated continuously), pp. 2-369; cited in Congressional Research Service, "Extended Voluntary Departure...", op cit., p. 12.

[3] Statement of Honorable John Joseph Moakley before Subcommittee on Immigration, Refugees and International Law, Committee on Judiciary, U.S. House of Representatives, April 12, 1984, p. 1.

[4] Statement in support of HR 4447 before House Judiciary Committee on Immigration, Refugees, and International Law, undated, p. 2.

[5] United Nations, International Migration Policies and Programmes: A World Survey (New York: 1982), p. 11.

[6] Data from World Bank, World Development Report 1984, Table 1.

[7] See, for example, citation in Michael S. Teitelbaum, Immigration, Refugees and Foreign Policy," International Organization, 38(3), Summer 1984, pp. 439-440.

[8] Washington Post, February 15, 1985, p. E1.

[9] Data from Congressional Research Service, "Extended Voluntary Departure...", op cit., pp. 6-7.

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April 22, 1985

Senator Alan K. Simpson
Chairman, Senate Subcommittee on
Immigration and Refugee Policy
U.S. Senate
Washington, D.C.

Dear Senator Simpson:

The Center for Immigrants Rights welcomes this opportunity to endorse S.377, a bill to temporarily stay the detention and deportation of Salvadorans.

The Center for Immigrants Rights is a non-profit educational organization providing general information on immigration rights to a wide range of church, union, and community groups. It also provides legal support to all the non-profit agencies in the New York metropolitan area (including Long Island) that give free or low cost legal representation to Salvadorans and others who are arrested by U.S. Immigration officials.

Through our work we have come in contact with the more than 2,500 Salvadorans who have been placed in deportation proceedings in the last four years in New York.

Virtually all of these individuals fled El Salvador only after they had had close friends or family members murdered or had themselves received warnings from the death squads.

Because virtually any form of social organization (unions, teachers associations, church prayer groups) is considered subversive in El Salvador, the violence extends to individuals who did not consider themselves that "political". The sad irony is that when these same individuals, who had to flee for their lives to the United States, come before an Immigration and Naturalization Judge in a deportation proceeding and make application for political asylum, the pervasiveness of the violence is used against the asylum seeker.

Time and time again, INS Judges have denied asylum to our clients saying that although there is widespread violence in El Salvador, this individual cannot prove he is any more likely than the general public to be subject to its effect. And because the violence is so widespread as to give the impression that it is random (a fact we dispute), virtually no Salvadorans receive asylum.

On top of the so-called "random" violence toward any civilian thought to be politically or socially active, many Salvadorans have suffered the effects of U.S.-funded bombardments of their towns and villages.

Although the effect of the weapons in the hands of the Salvadoran military is the more devastating because it is much more sophisticated than the weaponry used by the FMLN forces, we have spoken to many Salvadorans who have literally been caught in the middle of weapons cross-fire between army and rebel forces. The war in El Salvador is one of the most vicious in recent history in terms of involving civilians. (See attached Report on the State of the War).

An experienced news photographer for Time Magazine, Inc. has told us "I have been in six areas of conflict in the last ten years: Iran -Iraq, Beirut, Chile during the coup, Nicaragua during the revolution, Jordan and El Salvador. El Salvador is the worst." (Harry Mattison, February, 1985.)

Despite the dangerousness of the situation now in El Salvador, INS Judges routinely require Salvadorans to leave the country within 3 months of the denial of their asylum application, or face going back deported which means in hand-cuffs to the airport in San Salvador. Although INS Judges can grant longer periods for voluntary departures, they refuse to do so saying that a longer period is really what is termed "extended voluntary departure" and must be given by either the Administration or Congress. While many Judges have stated their sympathy for the plight of Salvadorans repatriated to a country torn by civil violence and civil war, they claim their hands are tied.

Granting extended voluntary departure or more simply a stay of detention and deportation for Salvadorans will in no way open the floodgates to a new wave of immigration. Almost every Salvadoran we have talked with expresses the desire to return home -- if and when there is peace.

We urge this Committee to report favorably on a bill to stop the deportation of Salvadorans while the war continues.

Respectively submitted,

Anne Pilsbury

Anne Pilsbury, Esq.

Report on the State of the War in El Salvador

By Monica Schurtman

December, 1984

Prepared for:
The Center for Immigrants Rights
48 St. Marks Place
New York, New York 10003

I. INTRODUCTION

Nineteen-eighty-four marked the fifth year of the civil war in El Salvador between the Salvadoran military and the Farabundo Marti National Liberation Front (FMLN). The last two years have seen a significant increase in the extent to which the civilian population has been directly affected by the fighting. As will be explained below, as a result of the way the war is being waged and of the nature of the weapons being used, it is now inevitable that substantial numbers of civilians are killed, wounded, or displaced from their homes.

II. AERIAL BOMBARDMENTS

A. Types and Effects of Bombs in Use

Four types of bombs currently are being used by the Salvadoran military; the FMLN apparently possesses no aerial weaponry.

1. Fragmentation bombs are designed to destroy buildings. On impact, however, fragmentation bombs can produce a crater up to ten meters deep, and it has been alleged that the Salvadoran Air Force (FAS) sometimes uses these bombs against people who have taken refuge in air-raid shelters and trenches (refugee testimonies in Americas Watch/Lawyers Committee for International Human Rights August 1984 report on human rights in El Salvador, Free Fire at 10 and 17; Centroamerica en la mira #7 July-August 1984, "El Salvador: papel de la avacion en la guerra contrainsurgente" at 7; refugee testimony in Christian Science Monitor, "Salvador charged with dropping incendiary bombs", 4/27/84). Fragmentation bombs emit shrapnel which can produce severe internal injuries, dismemberment, and death from immediate impact or from infection of wounds.

2. Fragmentation bombs with fuse extenders consist of regular fragmentation bombs with a one-meter pipe attached; the attachment causes the bombs to detonate just above the surface of the ground, creating an extremely forceful, high-speed lateral emission of high-temperature shrapnel. Thus, the anti-personnel capability of this modified fragmentation bomb is increased greatly. The bomb also is used effectively against livestock, crops, and trees.

3. & 4. Napalm or napalm-like bombs and white phosphorus rods are incendiaries, and are used mainly during the summer when dryness maximizes their effectiveness. The military uses incendiaries for a variety of purposes: to clear a region prior to sending in ground troops, to destroy crops, to make an area's inhabitants more visible by forcing them from hiding places in order to escape death by suffocation or burning.

In April 1984, Christian Science Monitor reporter Chris Hedges interviewed Salvadoran soldiers fighting in the vicinity of the Guazapa volcano in Cuscatlan. One soldier told Hedges: "Usually we drop incendiary bombs before we begin operations in the area around the volcano." Other soldiers said that they had seen villages in the zone razed to the ground and large areas of land scorched by incendiary bombs (Christian Science Monitor, 4/27/84).

In mid-September 1984, physicians from Medical Aid for El Salvador examined forty refugees from twenty different areas and found conclusively that civilians are being subjected to incendiary attacks.

Although it has been confirmed that napalm is stored in the Salvadoran Air Force Arsenal (New York Times, "Salvadorans Have Napalm, U.S. Ambassador confirms," 9/30/84), debate continues as to whether brand-name napalm has ever been used in El Salvador. It has been well documented, however, that either napalm or a substance of identical composition and effect is being used (Committee in Solidarity with the People of El Salvador, Alert!, November 1984 at 6; New York Times, "Salvador Officer Cited Napalm Use,", 10/9/84; New York Times, 9/30/84; Alert!, September 1984 at 6; Medical Aid for El Salvador September 1984 draft report at 5 and B3; Medical Aid for El Salvador, Bombings in General, 8/27/84; Centroamerica en la mira #7 at 7; National Public Radio, "All Things Considered", 5/4/84; WBUR "Weekend Edition", 4/28/84; Christian Science Monitor, 4/27/84).

Napalm bombs consist simply of jellied gasoline packed in cannisters; therefore it is extremely easy to duplicate. Upon impact, the cannisters split and spew napalm over an area approximately fifty yards in length. Napalm produces black, greasy smoke that sticks to things; according to retired U.S. army Colonel Edward King, "napalm burns until the jelly burns up"; it can't be wiped off (WBUR Radio, 4/28/84).

Napalm burns aren't necessarily fatal if treatment is administered quickly and properly. Unfortunately, in El Salvador, most civilian victims of napalm or napalm-like bombs have no access to proper medical care or adequate sanitary conditions, and death usually results from infection and/or dehydration. According to Medical Aid for El Salvador delegates, napalm wounds, like most burn wounds, are "among the most painful possible injuries to survive" (Medical Aid for El Salvador draft report, September, 1984).

Traditionally, rods containing white phosphorous are dropped from planes to mark a future bombing target with a white flame. Numerous independent reports indicate that the Salvadoran airforce now is using white phosphorous markers as actual incendiary weapons (Alert!, November 1984 at 6; Medical Aid for El Salvador draft report at 5-6 and B3; Centroamerica en la Mira #7 at 7; interviews conducted at a refugee camp in San Salvador by members of the Faculty for Human Rights in El Salvador and Central America (FACHRES-CA); National Public Radio, 5/4/84; WBUP 4/28/84; Christian Science Monitor, 4/27/84; El Salvador's Link, 1984: "Salvadoran Civilians - Victims of Chemical Weapons"; Human Rights Commission of El Salvador, Monthly Bulletin, no. 28, September 1983).

White phosphorous can burn through to the bone and can cause internal burning. Moreover, the phosphorous can break down calcium in bones, cause blood-poisoning, and if inhaled, can cause severe injury, usually leading to death. White phosphorous ignites on contact with air and burns until it is completely consumed, and will reignite if again exposed to air.

One woman who had been forced to flee her home because of bombardments in which white phosporous was used told City University Professor Saskia Sassen-Koob (a member of the June 1984 FACHRES-CA delegation to El Salvador) about the effects of white phosphorous: "If you are hit, it does not stay where it hits you, it is as if it travels on your skin. The hand dries up, and the burning sensation spreads through the body. It lasts perhaps a month, then one dies....".

B. The Extent of Aerial Bombardments of Civilians

During 1984, aerial bombardment of non-combatants by the Salvadoran armed forces increased significantly in virtually every province in El Salvador. On August 8, 1984, the Wall Street Journal reported that: "Civilians are suffering.

In areas where the bombings have been most intense, such as northern San Miguel province, people have begun flying white flags from their roofs....A Salvadoran university professor who monitors human rights abuses said the bombings are 'the new human rights issue'" (Wall Street Journal, "Reagan Plan to Revive Intelligence Flights Used by El Salvador Prompts Concerns", 8/8/84).

According to a North American working with the Organization of American States in El Salvador during the summer of 1984: "A slaughter from the air goes on continuously in various parts of the Salvadoran countryside. It doesn't receive much press because the dead are peasants scattered here and there, and in many cases they are counted as combatants by the Salvadoran military and the American embassy" (Boston Globe, "In El Salvador, a war against civilians that they will not forget", 10/1/84).

A classified report published in May by the U.S. Department of Defense Advisory Panel headed by Major General John Singlaub, was reportedly very critical of the bombing practices of El Salvador's airforce. Singlaub asserted that "there is a tendency to escalate to a higher level of violence than is appropriate" (Interview by Robert Parry, Associated Press, May 31, 1984).

Americas Watch and the Lawyers Committee for International Human Rights sent delegates to El Salvador during June and July of 1984. They took extensive testimonies of Salvadorans living in displaced persons camps who had fled their homes because of intensive FAS bombardments. The following is an excerpt from the delegation's report:

> We interviewed a woman who.....was missing her right hand. It had been severed at the wrist...She told us that she has three children and one of them, an eight year old girl, stood with us as we talked. The girl had what appeared to be fairly recent injuries on the back of her head and on her upper arm. The injury looked like burned scalp that had healed recently. The hair was missing from that part of her scalp.
>
> The woman told us that she had lived at Buena Vista in the vicinity of Suchitoto. It was an area, she said, in which there had been frequent bombings and frequent invasions by troops. Bombs had fallen in her canton on a number of occasions and she and her daughter were injured in a bombing attack on February 25, 1984. The bombing had been particularly heavy at that time and, for three days, had taken place morning, noon, and afternoon. She said six people had died during those three days, including a pregnant woman and daughter, another child, a boy of 16, and a woman who was burnt by a fire ignited by the bombing.
>
> She said that all or virtually all of the houses in the canton were destroyed or partially destroyed. There had been about 150 people in the canton and most had stayed there, living in the ruins of the houses and under trees, until about a month ago, despite almost daily bombings, helicopter machine-gunning, and mortar shelling. She said that guerrillas had not been in the vicinity during the three days of particularly heavy bombing when she had been injured; that it was possible that they passed onto the nearby roads; but that they did not come into the canton itself (Free Fire at 8).

On September 3, 1984, the Miami Herald reported that during his sermon the previous day at Metropolitan Cathedral in San Salvador, El Salvador's archbishop Arturo Rivera y Damas charged that military sweeps and air force bombardments sometimes are carried out in areas where FMLN presence is sparse and where most of the victims are civilians. He called on the military to moderate their use of air strikes (Miami Herald, "Salvador Urged to Rein in Air Strikes", 9/3/84).

During the first five months of 1984, 137 aerial attacks were carried out by the Salvadoran airforce against civilian populations. This represents an increase of 70% over the same period in 1983 (Centroamerica en la mira at 5). In certain departments, notably Usulatan, Cuscatlan, Chaletenango, Morazan, and San Vicente, aerial raids against non-combatants increased by as much as 530%. By March, approximately 7.5 tons of explosives per day were being dropped on civilian populations (Ibid).

Bombings of civilians apparently tripled after President Duarte took office on June 1st, 1984. In May, the Salvadoran military reportedly carried out 12 bombardments of non-combatants; in August, there were 38 recorded bombardments of non-combatants by the military. During June, July, and August of 1984, civilian populations allegedly were subjected to 99 military bombardments. This represents an increase of approximately 90% over figures reported for the same period in 1983.

On September 12, 1984, Duarte announced that he had imposed new, stricter guidelines to regulate air attacks (New York Times, 9/13/84, "Duarte Issues Rules for Air Attacks"). Unfortunately, it is far from clear that Duarte can control the actions of the military. In fact, during their mid-September trip to El Salvador, Medical Aid for El Salvador representatives received reports that bombing attacks in San Miguel and Usulatan were on the rise, "with alleged civilian victims and destruction of civilian housing" (Medical Aid for El Salvador draft report, September 1984). Moreover, the Miami Herald reported that on November 11th, 1984, El Salvador's archbishop Rivera y Damas called on the Salvadoran government to investigate allegations that the FAS bombed and strafed civilian targets during a counterattack against the FMLN in Suchitoto (Miami Herald, "Salvadoran archbishop urges bombing probe", 11/12/84; also see New York Times, "Salvadoran Rebels Attack Town but Are Repulsed", 11/10/84 and Washington Post, "Salvadoran Rebels attack Town", and New York Times, "Salvador Rebels are Still There", 11/11/84 for confirmation of military bombardment and for accounts of damage inflicted by FMLN rocket, mortar, and gun fire).

The battle in Suchitoto came in the midst of a government offensive begun on October 18, 1984, three days after the La Palma peace talks. The provinces of Morazan, San Vicente, Cabanas, Usulatan, and San Miguel have been experiencing especially intensive military sweeps (Washington Post, "Fighting intensifies in El Salvador", 10/29/84, telephone interview with Bob Armstrong of the North American Congress on Latin America, 11/19/84; Los Angeles Times, "El Salvador's War: Attrition, Standoff", 10/29/84; Miami Herald, "Salvador Army Sweeps Rebel Zones", 10/19/84; New York Times, "Salvador Army Opens a Sweep Against Rebels", 10/19/84).

C. Aerial Bombings and the Displaced

In its preliminary report on El Salvador for the first half of 1984, Americas Watch reported that bombing attacks "now account for the great bulk of the civilian death toll in El Salvador......and are driving thousands of Salvadorans from their homes, swelling the already enormous numbers of displaced persons and refugees living in miserable conditions" (as cited in The Wall Street Journal, 8/8/84).

According to the U.S. State Department, the number of people displaced within El Salvador grew by between 50,000 and 75,000 between January and June of 1984 (State Department response, 8/2/84 to questioning by Representative Michael Barnes, chairman of the Western Hemisphere Subcommittee of the House Foreign Affairs Committee). A recent study by the Agency for International Development determined that approximately 20% of El Salvador's population of five million now is internally displaced (AID:

"Displaced Persons in El Salvador; An Assessment", March, 1984 at 6). In addition, there are approximately one-quarter million more Salvadoran refugees living in Mexico and other central American countries ("The Situation of Displaced Salvadorans and Refugees", Dr. Segundo Montes: paper submitted to the First Congress on Human Rights in El Salvador," 11/22/84).

Efforts to care for and/or permanently resettle displaced Salvadorans within their own country have been consistently unsuccessful (see, for example, Americas Watch/Lawyers Committee for International Human Rights, El Salvador's other Victims: The war on the Displaced; Free Fire at 73-100; Christian Science Monitor, "Salvador plans to resettle 500,000 displaced persons", 9/28/84; Wall Street Journal, "Salvador Pacification Off to a Shaky Start", 7/18/84, American Friends Service Committee The U.S. Pacification Program in El Salvador: "Well-Being for San Vicente," 1983; Senate Subcommittee on Immigration and Refugee Policy staff report:"Refugee Problems in Central America," 98th Congress, 1st Session).

III. GROUND ATTACKS

Ground attacks against non-combatants, often preceded by aerial bombing and strafing, also are on the rise. Salvadoran journalist Nora Garcia reports that: "Consistent refugee testimony indicates that bombings frequently foreshadow an imminent army invasion, in which case the people flee their villages to hide... The refugees assert that during the invasions, the soldiers destroy everything that survived the bombings: houses, crops, fruits, and domesticated animals" (Alert!, September 1984).

During the summer of 1984, at least two ground attacks developed into fullblown massacres.

Between July 18th and 22nd, after massive aerial bombardments, army troops, including the Atlacatl Battalion, allegedly responsible for the 1981 massacre of 500 civilians in El Mozote, Morazan, invaded villages near Cinquera and Jutiapa in northwestern Cabanas. Approximately sixty-seven undefended civilians were massacred (Christian Science Monitor, 8/29/84; New York Times, 9/9/84; Los Angeles Times, 8/12/84; testimony submitted to Soccorro Juridico by Rutilio Sanchez.

According to Maria Julia Hernandez, director of Tutela Legal, the human rights monitoring office of the archdiocese of San Salvador, the majority of those killed were women, children, and elderly people.

Chris Hedges of the Christian Science Monitor visited the sites in August and found that " the small towns have been decimated by the government's heavy aerial bombardment". Hedges spoke with residents from the area who told him that when troops entered they shot to death the civilians they encountered, including those hiding in holes (Christian Science Monitor, 8/29/84).

Eyewitnesses also claimed that the bodies of some of the victims were burned by the soldiers and that houses and crops were destroyed.

Several journalists who visited the area, including Hedges, found independent evidence to confirm the villagers' stories. They saw fields of hacked corn, many severely damaged buildings, fresh graves with decayed human remains, and burnt wood at a spot where villagers claimed that the army had burned corpses.

The area of the massacre was under FMLN control with the support of many resident civilians, but no FMLN units were in the vicinity at the time of the attack; it is believed that they had been called north to Chaletenango where 1,000 FMLN troops were guarding a meetingof FMLN leaders (New York Times, 9/9/84).

On August 28, 1984, ground troops led by the Atlacatl Battalion invaded an FMLN-controlled area near the village of Las Vueltas in Chaletenango province. The attack began with mortar fire which caused residents of nearby towns to flee, leaving behind their belongings. All possessions, including animals, were destroyed.

People fleeing the attack settled down to rest on the banks of the Gualsinga River outside the village of Santa Lucia. According to a New York Times report, the group was accompanied by four armed FMLN guerrillaswho had been "leading them on the scramble away from the army"(New York Times, "Salvadoran Villagers report Attack by Army", 9/15/84).

On August 30th, government troops moved in by helicoptor and cordoned off the area. Shooting began and many people were forced to jump into the river. It has been estimated that between 34 and 50 civilians were killed by machine gun fire or by drowning (New York Times, 9/15/84; New York Times, "Salvadoran Prelate Asks Study of Grisly Reports", 9/17/84; Christian Science Monitor "Salvadoran colonel who mutinied is back in war', 9/26/84; The Nation, "Preparing for a Stepped-Up War", 10/20/84).

Journalists who visited the sites of both the initial invasion and the massacre corroborated villagers' accounts (New York Times, 9/15/84; The Nation, 10/20/84).

IV. RATIONALE FOR ATTACKS

Salvadoran authorities have attempted to justify missions against civilians by asserting that only those who lend support to the FMLN are attacked. It cannot be denied that FMLN supporters (referred to as "masas" in El Salvador) do exist in part of El Salvador: they provide food, shelter, and cover for insurgents. However, it also cannot be denied that masas are, almost without exception, unarmed civilians. It also cannot be denied that non-partisan civilians are attacked too. The Red Cross for instance, reports that five of its medical aid stations were bombed by the airforce during 1984, and Americas Watch/ Lawyers Committee for International Human Rights April, 1984 report cites bombings of refugee camps.

V. FMLN ABUSES

FMLN forces also are guilty of offenses against non-combatants, although according to most sources, their offenses have not been as frequent or indiscriminate as those committed by the army.

Nevertheless, during 1984, at least one of the branches of the FMLN began to forcibly recruit civilians, a practice also carried out by the Salvadoran army . It also has been reported that the ERP (People's Revolutionary Army) faction of the FMLN has begun to execute deserters and civilians they suspect of supporting the Salvadoran army (New York Times, 10/7/84 and 11/4/84; Christian Science Monitor 8/27/84; Miami Herald, 9/28/84; Washington Post, 9/8/84).

Update to Report on the War in El Salvador

I. NEW INFORMATION ON BOMBARDMENTS OF CIVILIANS

A report released by the Commission for the Defense of Human Rights in Central America in January, 1985 alleges that a total of 237 bombing runs against civilian populations were carried out between January and August of 1984. The report verifies that bombardments of non-combatants have increased substantially during the past 2 years. For example, in 1982 in the department of Cuscatlan, 7 bombing runs against civilians were carried out. During the same time period in 1984, 74 runs were carried out against civilians in Cuscatlan. This represents an increase of more than 1000%. In Chaletenango, bombings have increased by 500%; there were 30 bombardments of non-combatants in Chaletenango between January 2nd-August of 1984, up from 6 during the same period in 1982.

According to Bob Ostertag, editor of Alert! (a monthly publication of the Committee in Solidarity with the People of El Salvador), the Salvadoran air force currently possesses approximately 6 functioning AC-37 planes which usually carry approximately 6 bombs each. In addition, El Salvador has a fleet of UH-1H (Huey) helicopters; these are used for transporting troops, can carry up to 5000 pounds of external ordinance (rockets, machine guns, and grenade launchers) and can be used to drop incendiaries (Information compiled from conversation with Bob Ostertag, 1/15/85; Pacific News Service "New Trip Wire -- Vietnam-Style Helicopter Tactics Will Up The Stakes in Salvador War"; and American Friends Committee, The U.S. Pacification Program in El Salvador: "A Catalog of U.S. Arms Transfers to El Salvador"). A single bombing run thus can cause extensive destruction.

II. THE WAR CONTINUES

On November 18, 1984, the Washington Post reported that Bishop Gregorio Rosa Chavez, a key intermediary in the peace talks between El Salvador's President Duarte and the

Farabundo Marti National Liberation Front - Democratic Revolutionary Front ("FMLN") opposition announced that the atmosphere for continuing talks had "deteriorated considerably" because of a new outbreak of violence (Washington Post, "Salvadoran Bishop Doubtful About Talks," 11/19/84).

While government troops are continuing an offensive they began on October 18, 1984, the FMLN has retaliated with a campaign of sabotaging electric power lines, of paralyzing road traffic by threatening to destroy vehicles found on highways, and of counterattacking Salvadoran military forces (Washington Post, supra; Los Angeles Times, "Rebels Raid Power Lines, Darkens Eastern Salvador," 11/16/84; Miami Herald, "6 rebel camps razed, Salvador army claims," 11/15/84; New York Times, "Guerrilla Threats Cripple Traffic in El Salvador," 11/13/85).

III. THE ESCALATING AIR WAR

The sophistication and intensity of the air war, in particular, is increasing. According to Lieutenant Colonel Donald H. Brownlee of the Pentagon, as of October 26, 1984, the United States had approved the transfer of 48 UH-1H helicopters to El Salvador with "more in the works" (telephone conversation with Lieutenant Colonel Brownlee, 10/26/84). On January 9th, the New York Times cited 35 UH-1HS in actual possession of the Salvadoran airforce, and noted that at least 5 more are to be delivered in 1985 (New York Times, "El Salvador Gets New U.S. Gunship," 1/9/85).

The Christian Science Monitor reported on September 12th, 1984, that Salvadoran airforce officials also are requesting 5 additional A-37 jet fighter-bombers to bring the total of A-37s to 11 (Christian Science Monitor, "Salvadorans split over boosting their firepower with Vietnam-type gunships," 9/12/84). A-37S are used to drop 250, 500, or 750 pound fragmentation bombs (Medical Aid for El Salvador, September 1984 draft report at C1; Washington Post, "U.S. considers AC47 Gunships for El Salvador;" 9/1/84). They can carry almost 5000 pounds of externally mounted bombs and air munitions. (American Friends Service Committee, The U.S. Pacification Program in El Salvador: "A Catalog of U.S. Arms Transfers to El Salvador").

On January 8, 1985, the American Embassy announced that a DC-3 aircraft had been converted into a C-47 gunship and sent to El Salvador. The New York Times heard that "the gunship is part of a general build-up of the Salvadoran Air Force" (New York Times, "El Salvador gets a New U.S. Gunship," 1/9/85).

The C-47 gunship is fitted with special sights, night vision equipment, flare launchers, and 3 mounted 50 caliber machine guns capable of firing over 1,500 rounds per minute (New York Times, "Salvador Said to Break Gunship Pact," 1/11/85; New York Times, 1/9/85; Christian Science Monitor, 9/12/84).

On January 10, 1985, Salvadoran Army Chief of Staff Adolfo Blandon commented on the C-47: "It's a good plane. But we need more and better ones." This may have been an allusion to an earlier proposal that the U.S. send AC-47 gunships (known in Vietnam as "Puff the Magic Dragons") mounted with Gatling machine guns capable of firing 18,000 rounds per minute. Transfer of the Gatling-fitted AC-47s was temporarily scrapped after protests by Congress and the North American public.

Blandon also said that he would soon ask the U.S. to send a total of 6 gunships and 10 Hughes 500 helicopters fitted with rapid-fire miniguns similar to those used in Vietnam. According to the New York Times, "if delivered, such weapons would radically increase the fire-power available to the Salvadoran military" (New York Times, 1/11/85).

Human rights organizations warn that "such high-powered weaponry could cause heavy civilian casualities in populated areas where many battles are fought in El Salvador" (Ibid).

Witnesses to a January 9th battle in San Vicente reported seeing 2 C-47 gunships in use. American Embassy spokesman Donald Hamilton acknowledged that the Salvadoran air force is in possession of a second C-47 gunship, but that under an agreement with Congress, it was not yet to be used (Ibid).

IV. INCREASE IN POLITICAL VIOLENCE

Political violence also appears to be on the rise. On January 6, 1985, the Salvadoran government's chief corruption investigator, Pedro Rene Yanes, was shot to death by a member of the right-wing Nationalist Republican Alliance (ARENA). (New York Times, "Head of Corruption Inquiry Is Slain in El Salvador", 1/7/85; New York Times, "Politics Likely to Delay Salvador Peace Talks," 11/3/85). The ARENA party currently is in control of the National Assembly, El Salvador's equivalent of the U.S. Congress.

On January 10, 1985, it was announced in San Salvador that a plot to assassinate El Salvador's Archbishop Arturo Rivera y Damas and Auxiliary Bishop Gregorio Rosa Chavez had been uncovered (New York Times, "Police in El Salvador Said to Guard Prelate", 1/11/85).

On January 13, 1985, the New York Times also reported that the FMLN had allegedly killed a retired army officer and a town mayor.

V. FORMATION OF CIVIL DEFENSE UNITS

In recent months, the Salvadoran army has stepped-up a campaign to organize civilians in conflicted or FMLN-controlled areas into civil defense units. The army hopes that the units will prevent FMLN forces from entering villages. According to the New York Times, the main purpose of civilian defense seems to be "to force villages to commit themselves to the Government in an effort to shift the balance in the continuing civil war...." (New York Times, "Villages in Salvador Resist Plans for Self-Defense," 1/7/85).

Financial aid allegedly has been withheld from towns refusing to organize civil defense units. Nevertheless, in many areas, residents continue to balk at civil defense, since the consequences of forming such units in the past have been tragic. Until 1979, most towns in El Salvador were organized into army-associated civil defense forces. They were dismantled because of extensive human rights abuses or because of successful FMLN attacks (*Ibid*). As reported in the *New York Times*, civilians say "they have learned to survive by remaining strictly neutral in the war between the Government and the rebels." The mayor of La Palma asserted that while the town's residents don't oppose the army, if they form a defense force, "it will be dangerous." The mayor of Santa Clara in San Vicente Department related that Santa Clara's residents decided that it would be better to leave their homes than to organize civil defense units. Twenty men were killed in Santa Clara in 1982 when the army failed to back up the civil defense force when it came under FMLN assault.

In short, the military's campaign to organize a civil defense system will put Salvadoran civilians in situations of increasing danger.

PREPARED STATEMENT OF ROGER CONNER, EXECUTIVE DIRECTOR, FEDERATION FOR AMERICAN IMMIGRATION REFORM

Mr. Chairman and Members of the Subcommittee:

The Federation for American Immigration Reform (FAIR) is a national non-profit membership organization working to stop illegal immigration and reform U.S. immigration policies to reflect the economic and environmental realities of the 1980s. FAIR has over 100,000 supporters in every state of the Union and has worked hard to supply Congress, the media, and the American people with data and information about the relationships between immigration policy and important national values. We appreciate this opportunity to submit a statement regarding Senate Bill 377, to grant Extended Voluntary Departure to illegal aliens now residing in the United States.

S. 377, commonly referred to as "extended voluntary departure" for Salvadorans, would give a congressionally mandated amnesty to all Salvadorans currently residing illegally in the U.S. The bill does not provide procedural guidelines for the repatriation of Salvadorans upon the sunset of the amnesty; rather, the drafters of the legislation assume that Salvadorans will return to their home country voluntarily in 18 months or so.

There are three issues that must be addressed upon consideration of this legislation:

(1) Is a congressionally mandated grant of "Extended Voluntary Departure" to 500,000 Salvadorans justified?

(2) Will the legislation function as intended by Congress, i.e. will the amnesty be only a temporary reprieve from deportation followed by a voluntary return?

(3) How will S. 377 affect current U.S. immigration policy?

Implications of S. 377 to U.S. Immigration Policy

Throughout the history of our country, U.S. immigration laws have often been used, abused, circumvented and nullified to achieve foreign policy goals. In 1980, Congress tried to move our immigration laws out of the foreign policy arena by enacting the Refugee Act of 1980. The Refugee Act was intended to supplant all previous ad hoc and nation-specific immigration legislation. By creating a uniform standard for what constitutes a "refugee" and mandating an individual determination of refugee and asylum applications, the Act set a new objective for refugee and asylum policy that determinations should be made based on the personal circumstances of each applicantrather than foreign policy goals.

Passage of S 377 would signal a return of our immigration policy to the foreign policy arena. Proponents of such a major departure from the principles of the Refugee Act bear a heavy burden of justification.

The source of demand for "Extended Voluntary Departure" for Salvadorans has come from the so-called "Sanctuary Movement." When members of the movement are asked why we should grant such an extraordinary reprieve to nationals from El Salvador, the basic response is that the U.S. has an obligation to offer asylum to all Salvadorans here because U.S. foreign policy in El Salvador has created the conditions from which Salvadorans are fleeing.

The irony of the situation is that the Sanctuary Movement claims that EVD is necessary because the Reagan administration, for foreign policy reasons, is denying all Salvadoran asylum applications, even the valid ones. How to correct this? The Sanctuary Movement suggests that we grant all asylum claims, even the invalid ones as a protest to U.S. foreign policy in Central America. In either instance, our immigration policy would be used to advance foreign policy goals and agendas.

Yielding to such pressures in the past has undermined our immigration policies. Since the founding of FAIR in 1979, we have urged every administration to review refugee and asylum claims on the merits of each individual application. We strongly believe that the national debate over foreign policy should not prejudice or benefit any claimant.

Plainly, the U.S. has not fully lived up to this principle; but that is no reason to abandon the principle. Rather, we should work within the existing system, i.e. the courts and federal agencies to demand that the principle be upheld. [For a further treatment of the Sanctuary Movement's role in this issue, please see Attachments A, B and C].

Is EVD for Salvadorans Justified?

Proponents of Extended Voluntary Departure for Salvadorans argue that the Unites States is failing to uphold the Refugee Act and is instead systematically denying asylum claims of Salvadoran nationals because the Reagan Administration supports the Duarte government.

The Refugee Act and regulations governing asylum provide extensive hearings and review by independent administrative bodies and the courts. These include the District Directors of the Immigration and Naturalization Service, Immigration Judges, the Board of Immigration Appeals (BIA), the U.S. Court of Appeals, and finally, the Supreme Court. The federal agency employees making these decisions are career professionals, most of whom were in their positions before President Reagan was elected. Federal judges have lifetime appointments.

The notion that all of these career public servants are in a conspiracy to advance Reagan policy by denying legitimate asylum claims, intentionally sending El Salvadorans to death and torture in the process, strains credulity.

Those advancing such serious allegations have a burden of proof they have not met. More Salvadorans are granted asylum than all but three other countries in the world. Only one other country is granted more asylum claims than El Salvador, on a per capita basis.

The proponents of S. 377 routinely claim that Salvadorans returned to their homes from the U.S. are facing torture and death. While this assertion has been often repeated, virtually no credible evidence has been advanced to support it. In fact, there are numerous studies which show that returned Salvadorans are not singled out for prosecution simply for having migrated illegally to the United States.

The American Civil Liberties Union, seeking evidence that illegal aliens deported from the United States were summarily imprisoned, tortured and killed by the Salvadoran government, failed to find any supporting evidence for this claim. After an exhaustive search for human rights violations inflicted upon returning Salvadorans, they established that 99.66 percent of returned Salvadorans had been returned without harm. As to the remaining one-third of one percent, the ACLU was simply unable to track them down. Significantly, this major study found no hard evidence of human rights violations as a result of U.S. immigration policy, which was quite the opposite of what the investigators hoped to find.

A recent State Department study of repatriated El Salvadorans reached a similar conclusion; agency investigators could not find even one case of violence against a returning Salvadoran. (Elliot Abrams, testimony before Senate Immigration Subcommittee, April 22, 1985) Furthermore, Tutela Legal, the human rights office of the Archdiocese of El Salvador, is on record as denying any pattern of persecution against repatriated Salvadorans. The fact of the matter is that in a country crawling with U.S. journalists, missionaries, and human rights activists, not a single case of abuse by the government against one of the Salvadoran nationals returned in the last five years has ever been established.

It is worth noting here that the Intergovernmental Committee on Migration (ICM), based in Geneva, Switzerland and in charge of providing assistance to repatriated Salvaorans, has reported that the main complaint of recently returning Salvadorans is not that they are persecuted, but that they couldn't find a job. (Refugee Reports, March 1985, p. 14)

Legitimate refugees fleeing El Salvador are being granted asylum. This fact is reflected in the large overall number of asylum requests granted (versus percent granted) to Salvadoran nationals. No evidence exists to support claims of brutality inflicted upon returned Salvadorans. Given these facts, the proponents of S. 377 have not justified the extraordinary remedy of suspending the immigration law as it applies to El Salvadorans.

Is S. 377 Practical?

S. 377, as drafted, fails to address a host of practical concerns. First, the bill does not provide any procedures for, or assurances of, the repatriation of Salvadorans receiving this "temporary" relief. Second, the bill seeks to cover only those Salvadorans present in the U.S. as of date of enactment of the legislation; however, the bill fails to provide any guidelines or criteria for the INS to determine whether a Salvadoran can meet this eligibility requirement. Third, the bill does not speak to the issue of cost, and who will be fiscally responsible for this amnesty.

Under the legalization provision contained in the Simpson-Mazzoli immigration reform proposal of the 98th Congress, the recipients of amnesty would have been required to pay a fee for the processing of their legalization applications. The INS projected that would cost $158 million to process 3 million claims. Using that cost assessment, we estimate that it could cost $26 million or more to process 500,000 Salvadoran "Extended Voluntary Departure" applications.

It is unfair for Congress to pass S. 377 without designating additional funds or providing extra staff to the INS. Normal INS functions would have to be put on hold and their limited personnel reassigned in order to handle the flood of applications for EVD that this legislation would generate.

Another cost factor not considered in S. 377 is the additional tax burden to U.S. citizens caused by granting "quasi-legal" status to approximately 500,000 persons. Under a consent agreement entered into during the Carter administration that is being used to interpret certain state statutes, Salvadorans granted EVD could be eligible for virtually all state and federal welfare programs.

For over a decade, long before the onset of current civil strife, Salvadorans have migrated to the United States as illegal aliens. In fact, a quick check of the Statistical Yearbook of the Immigration and Naturalization Service reveals that for the last ten years, El Salvador has sent more illegal aliens to the United States than any other country except Mexico (as measured by apprehensions of illegal aliens in the United States). The U.S. Department of State estimates that of the 500,000 Salvadorans now living in the United States, approximately 350,000 were present in the U.S. prior to the start of the war in 1979. Clearly, these people did not come to the United States fleeing civil strife in their homeland. They came for the same reasons as millions of other illegals: to take jobs.

Most immigration scholars agree that a grant of Extended Voluntary Departure to Salvadorans now in the United States would result in an institutionalized flow of clandestine migrants from that country. The Spanish International Network recently went to El Salvador to conduct a poll. The question asked: If you could leave El Salvador and go somewhere else, what country would you immigrate to? A full 67 percent of all respondents chose the United States as their country of first preference.

We must have no illusions about the bill before this committee today. In El Salvador this bill will be perceived as a "welcome mat" for all wishing to migrate to the United States.

Suspension of deportation for such a large group of illegal aliens would set an unfortunate precedent. If a de facto amnesty is granted to illegal aliens from El Salvador now living in the United States, Congress will soon be faced with requests for similar treatment for other groups of clandestine migrants.

If legislation is adopted that would grant preferential treatment to Salvadoran nationals, why should it not also be granted to persons from the

Philippines, Palestine, Lebanon, Northern Ireland, Haiti, Guatemala, Peru, or Turkey? Where do we draw the line? How many people can the United States accept and how should we decide whom we shall admit?

The Census Bureau estimates that the population of the third world will grow by about two billion in this quarter-century. That is nearly ten times the population of the United States. There are already massive unemployment and food shortages, with the prospect that the unemployment will get worse. Desperation is likely to spawn violence, some of the violence will be against governments friendly to the U.S., and they are likely to respond in kind. How many people do Sanctuary advocates believe the United States should be prepared to take? Have they really considered the implications of this idea, which started as a limited political protest about U.S. policy toward one small Central American country?

These are hard questions, but necessary ones. S. 377 simply evades them.

CONCLUSION

S. 377, like prior administrative grants of "extended voluntary departure," is ill-conceived and discriminatory. It provides for the admission of immigrants to the United States outside of normal per-country ceilings that were enacted to prevent nation-specific discrimination in U.S. immigration law. There is no precedent for a legislatively enacted amnesty of the magnitude found in S. 377, and to set such a precedent at this time of mass population explosion, world hunger and civil unrest would expose us to the potential loss of any effective control of our border.

The bill before you today fails to provide the very basic procedural and fiscal mechanisms necessary to carry out its intent. The bill asks for an extra-legal admission of 500,000 people and yet fails to justify the need for such a drastic and major circumvention of present laws.

S. 377 would reward illegal immigrants for breaking the law and would send a powerful message to those potential legal immigrants waiting patiently to come to the United States. S. 377 is an admission of defeat. By passing this legislation, Congress will be telling the world that the United States has lost control of its borders and that Congress will adjust the status of all those who can manage to get in.

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LETTER

Salvadorean refugees

Congressman Joe Moakley makes an eloquent plea for providing sanctuary to the victims of El Salvador's civil war in his opinion and commentary article, "Let's provide Salvadorean refugees a temporary haven" (Feb. 12). No one, including the Federation for American Immigration Reform, is without sympathy for innocent civilians who have suffered and continue to suffer as a result of that conflict.

I find, however, many flaws in Congressman Moakley's contention that displaced Salvadoreans be granted asylum under the extended voluntary departure (EVD) program.

Violence in one's native country should not be an acceptable reason for admission to the United States. It is an unhappy fact of today's world that violence and conflict are endemic to many parts of the globe. Surely even the Congressman would not suggest offering sanctuary to everyone who could meet this criterion.

Second, there is little to indicate that an end to the guerrilla war in El Salvador is imminent. If and when conditions return to "normal" in that country, the people involved are likely to have established roots in the US and may not be willing to depart voluntarily.

He attempts to draw a comparison between the Salvadoreans and the situation of the Poles, Ethiopians, Afghans, and Ugandans who have been granted temporary refuge under the EVD provision. The case of El Salvador is different. El Salvador has a democratically elected government, which, although far from perfect, is trying to establish a society in which basic human rights are respected. Does the Congressman mean to imply that the government of President Duarte should be lumped in the same category with the brutal government of Soviet-occupied Afghanistan?

Roger Conner, executive director
Federation for American Immigration Reform
Washington

Letters are welcome. Only a selection can be published and none individually acknowledged. All are subject to condensation. Please address letters to "readers write."

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ROGER CONNER

An opposing view

Don't give asylum to illegal refugees

WASHINGTON — Saul Alinsky noted that people often do the right thing for the wrong reason.

But the Sanctuary Movement harboring persons from El Salvador illegally in the USA shows the opposite is also true: People — even church workers — do the wrong thing for ostensibly the right reasons.

The cornerstone of the church-inspired movement is to smuggle illegal aliens as conspicuously as possible.

The publicity generated is then exploited to voice opposition to the deportation of any Salvadorans, as well as the Reagan administration's foreign policy in Central America.

But their behavior has broader implications. If well-meaning people take the law into their own hands, we will soon deteriorate from a nation of laws into a nation of men — the precise situation many are confronting in Central America today.

Today there are an estimated 500,000 Salvadorans illegally in the USA, one in nine of that country's native population. Given an exploding labor force in Latin America, we will continue to see more and more people trying to enter this country for the foreseeable future.

Sanctuary workers want everyone who is here now illegally, and anyone who may come in the future, to be able to stay. But to grant that kind of blanket exemption would quickly undermine the integrity of our overburdened asylum laws, laws that mandate individualized decisions.

As Americans, we have established ways to right a wrong.

If we disagree with a law, we should work to change it, not flaunt it.

Roger Conner is executive director of the Federation for American Immigration Reform.

If we believe the government is breaking a law, we should use the courts to stop it.

Civil disobedience — and a willingness to accept the consequences — are arguably appropriate only after exhaustive efforts to work within the system have failed.

To do otherwise is to opt for anarchy and to challenge the social compact.

The group's followers claim to be guided by a higher law. As sincere as they may be, our laws do not generally yield to claims of freedom of religion.

After daring the government to arrest them, they may not now seek to hide behind the veil of the church. These protesters must face the societal response to their actions.

And in the end, do they offer any solutions?

Over 2 billion persons today live under regimes that we would consider violent or oppressive.

If we really want to help, we should:

- Respect the law.
- Provide sufficient financial support for the U.N. high commissioner for refugees to temporarily house in camps in Central America those fleeing persecution or violence.
- And provide ample opportunity for those fleeing persecution to apply for asylum from outside the country.

For those Salvadorans who enter the USA solely to find work, Congress needs to pass a law banning employment of illegal aliens to encourage them to return home.

A SPECIAL REPORT
Religion & Democracy
A Newsletter of the Institute on Religion and Democracy
March 1985

The Sanctuary Movement:
A Time for Reappraisal

The Sanctuary movement has been gaining growing support among major U.S. denominational boards and agencies in recent months, calling us to the Biblical injunction not to oppress the stranger in our midst. It should not be surprising that many Christians and Jews have responded.

But there are some who believe that the sanctuary campaign is primarily a means to undermine U.S. opposition to Marxist-Leninist movements in Central America. These politicized sanctuary supporters are not on the fringes of the movement: they are at its very center. The principal sanctuary coordinating organization, the Chicago Religious Task Force on Central America declared in a December 1984 position paper that:

> ...some churches have declared themselves sanctuary and have done almost nothing to oppose U.S. military aid to Central America. We question whether this is adequate.... What is the value of a sanctuary church that continues its support (by silence, by vote or whatever) for U.S. policies in Central America?

The political agenda of such leaders of the sanctuary movement has so detoured the movement from Christian purposes that it now threatens not only to worsen the problems of Central Americans, but to further undermine the moral credibility of our churches.

Consider, for instance, the central argument of the movement: the assertion that an illegal alien about to be deported to El Salvador probably faces death upon his return. There is simply no proof that this is so.

El Salvador has been the second largest source of illegal aliens in the U.S., after Mexico, for the last thirty years. In 1979, before the beginning of guerrilla war, the number of Salvadoran illegal aliens in the U.S. was already approximately 350,000. By 1984, that number had increased to some 500,000.

Clearly, a large proportion of the illegal Salvadorans now in the United States were here before the onset of civil war. What do we know about the others? In fact, most Salvadoran illegal aliens apprehended by the INS opt for

Sanctuary, Cont'd on page 2

Felipe Excot, a featured speaker, denounces U.S. imperialism at the sanctuary symposium held in late January at the Temple Emanu-El in Tucson, AZ.

what is called voluntary departure, in which they post bail and arrange to return to El Salvador within six weeks in order to collect their money. In 1982 the number of Salvadoran voluntary departures (2,701) exceeded the number of deportees (2,127). Today the Congressional Research Service (CRS) of the Library of Congress estimates that "About 70% of the Salvadorans apprehended by INS return to El Salvador under a 'voluntary departure' agreement rather than a deportation order."

Even those Salvadorans who do apply for asylum after apprehension -- a growing number now -- freely cite economic considerations as a principal reason for coming here. These asylum applicants have overwhelmingly responded in the asylum questionnaire that they were not in any more jeopardy than anyone else in El Salvador.

Thus by self-admission these persons do not qualify as refugees under international law. The 1951 Geneva Convention on Refugees defines a refugee as someone who has a "well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion." A refugee must demonstrate membership in a group subject to persecution. It is not enough simply to be trying to escape generally unpleasant conditions in one's home country.

The assertion that Salvadorans who are sent back to El Salvador are in grave danger there has been repeated so often and with such a strong sense of urgency by church sanctuary activists that the absence of hard evidence sometimes goes unnoticed.

In 1982 the Chicago Religious Task Force's Basta! Sanctuary Organizer's Nuts & Bolts Supplement, No. 1, claimed Amnesty International as a source for the assertion that: "As of August 1982 ... 30% of all refugees forcibly returned to El Salvador from the US and Mexico have been tortured, maimed or murdered upon their return." But, this testimony was disclaimed in a letter of June 23, 1983 by Rona Ellen Weitz, Amnesty International's Area Coordinator for Latin America, who stated that "for the record, none of the facts or figures attributed to Amnesty International in the organizer's guide published by the Chicago Religious Task Force are accurate."

In 1983 the American Civil Liberties Union (ACLU) published a study which attempted to fill in the lack of documented evidence of abuses against Salvadoran returnees. This study was based on a comparison of the names of 8,500 deportees with a list of the names of 22,000 victims of human rights violations. The study took nine months but found only 113 "possible" matches among the names, and a mere 25 cases where, by the ACLU's own estimation, there was better than an average possibility of a match, i.e. 1/3 of 1% of the total. The ACLU could not actually establish a single postive identification between a deportee and a human rights victim. This study is still quoted as if it proved the sanctuary movement's case, while in fact it proves the opposite.

Unlike the ACLU, the State Department has conducted an "on the ground" investigation of what actually happens to deportees when they return to El Salvador. Of a random sample of 482 deportees, interviews conducted with the deportee or a close family member found only one case in which a deportee became a human rights victim. In that one case, the deportee was shot and killed back in 1981 by the guerrillas, apparently as a result of mistaken identity.

No Salvadoran human rights organization -- including even Tutela Legal, a favorite source for opponents of U.S. policy in El Salvador -- has reported any case of a deportee being killed since two deaths were reported in 1981. Moreover, the Geneva based Inter-government Committee for Migration (ICM), which provides resettlement services to every returnee to El Salvador, has found no cases of human rights abuses of the returnees.

Today the general level of violence resulting from the fighting in El Salvador is steadily abating. Out of a total population of 5 million, estimates of the number of civilian violent deaths in 1984 range from the 771 compiled from newspapers reports to Tutela Legal's high estimate of 2,024. Tutela Legal asserts that among its number, 205 were the victims of death squads, 55 were killed by guerrillas, and the rest were killed incidental to combat between the army and the guerrillas. But Tutela Legal has been criticized for counting dead guerrillas as civilians killed in combat, and the

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guerrilla practice of hiding in civilian homes and forcing civilians to act as supply carriers must also be weighed when evaluating the organization's figures.

But even if one accepts Tutela Legal's numbers, the 2,024 civilian victims in 1984 represent a decrease of more than half from the 5,142 reported in 1983. This decline is a product of the improving government control over the practices of the security forces and the firing of officers charged with abuses. The army has also shown greater skill in separating civilians used for cover from the guerrillas. Even Americas Watch, a critic of the U.S. Administration, has noted in its July, 1984 report that "death squads are virtually non-existent today." Violence in El Salvador now is largely criminal -- not political -- save for that which occurs in military combat. In some degree, this must be attributed tu the success of U.S. military training and human rights policies.

These facts are apparently understood by the Salvadoran people. Most of those fleeing the civil disorder in El Salvador go to the regions of the country held by the army. According to U.S. government figures, in Fiscal Year 1984 they numbered at least 400,000. This is seven times the number of Salvadorans who fled to camps outside El Salvador, including 20,000 in Honduras, 18,000 in Costa Rica, 17,500 in Nicaragua, 3,500 in Mexico, and 2,000 in Belize. And only a small portion of these would claim they were fleeing from the Salvadoran authorities.

While many Salvadorans have fled the areas affected by the guerrilla war, more have left El Salvador because of the decline in the economy caused by the armed struggle. This economic crisis worsened when the guerrillas, unable to defeat the army in the field, turned their war against the economy, deliberately targeting warehouses, bridges, coffee farms, and power stations. (Ironically, some church-based opponents of U.S. policy in El Salvador carry out their own version of what Archbishop Rivera y Damas calls the "War of the Empty Table" by pressing for a boycott of Salvadoran coffee.)

But the growing ability of the Salvadoran army to maintain stability has now begun to produce an improvement in the economy. According to The Washington Post (February 11, 1985), the Salvadoran economy stablilized in 1983 and posted real growth in 1984. There are already indications that this economic revival is slowing migration to the U.S.

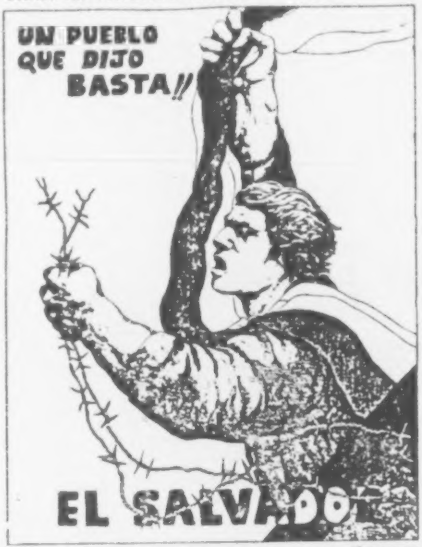
But there are still many thousands of Salvadorans who come illegally to the United States, and feeling grows among many of our citizens that we are becoming a nation which has no real borders, and therefore no effective government. Many who favor more liberal U.S. immigration policies agree that whatever those policies are, they must be established by law and effectively enforced. Christians and Jews who blur the distinction between authentic asylum-seekers and economic refugees contribute to undermining our government's policy of granting political asylum. This policy has not always been honored, as the shameful treatment of Jewish refugees in World War II reminds us. Those who are abusing the concept of political asylum in order to "destabilize" our foreign policy may again turn public opinion against the American tradition of granting haven to the victims of political persecution.

At present, any illegal alien is allowed to apply for asylum and to remain in the United States while his case is being heard. The INS, the State Department, the immigration judges, the Board of Immigration Appeals and the U.S. District Courts are obliged to guarantee his rights until his case is decided. U.S. immigration law, far from deserving attacks from churches, has permitted our country in recent years to accept for permanent resettlement more refugees than all of the other Western countries combined.

Under U.S. law Christians and Jews are not prevented from helping illegal aliens. An editorial in The Washington Post clarifies this important point:

> Leaders of the sanctuary movement are embarked on a heavily political mission. They seek to do more than shelter and feed Salvadoran refugees, which would not violate any American law. Instead, by organizing thousand-mile caravans and calling press conferences, they publicize the fact that they are transporting undocumented aliens in furtherance of their evasion of the immigration laws, and that is a violation.

It is clear that the plight of illegal aliens in the United States is a painful one, and surely our churches should maintain special ministries to aid them. But the sanctuary movement is becoming a cause which exploits these vulnerable people for political ends which are not good, either for Salvadorans or Americans.



This husky hero of socialist realism appears on the cover of the Chicago Religious Task Force's sanctuary manual. For the public, the iconography is usually more appealing.

WEDNESDAY, JANUARY 23, 1985 / PAGE 3C

The Washington Times

GEORGIE ANNE GEYER

The sanctuary movement

Politically naive church members lured by ideals

The announcement from the federal grand jury in Phoenix that 16 church people from the "sanctuary movement" now have been indicted for smuggling illegal aliens from Central America into the United States is at first glance shocking.

How can the government do this to good church people? How can anyone not defend saving people who are fearful for their lives? Is not the U.S. government to blame, particularly in the cases of the political refugees from El Salvador, the country torn asunder by American policies?

Those are probably the general suppositions, for the indictments handed down Jan. 14 certainly establish for the first time the U.S. government vs. the sanctuary movement, which now involves more than 200 churches nationwide. However, those common suppositions answer only a fraction of the questions raised in this sad but revealing story.

First, we are dealing with church people — both Protestant and Catholic — who have taken foreign policy into their hands to an extent never before seen in American history. This is, indeed, the age of every American acting as his own secretary of state.

Moreover, the careful wooing of American Christians by Marxist regimes such as the Nicaraguan Sandinistas now has reached epidemic proportions. Last year, more than 250 church groups traveled to Nicaragua, where they were hosted by the assiduous Sandinistas. Few showed any suspicion about events there; pre-arranged "trips" often included stopping to picket the American Embassy.

What is curious about the North American church groups who sympathize so strongly with the Sandinistas is that they show so little interest in what their local coreligionists think or are experiencing. Take, for instance, Nicaragua and the Roman Catholic Church there.

The Sandinistas have persecuted the Catholic Church there so relentlessly that an estimated 95 percent of the church members now are strongly against the government. But does this move the many North American church people who go there? Not much. They still like to talk about the revolution in Nicaragua — where the people are more and more unhappy with the regime — as the "Gospel Incarnate."

Or take the political situation in El Salvador. That tormented country does happen to have an exemplary government in place, at least at the moment. Its Christian Democrat president, Jose Napoleon Duarte, is a man we would be lucky to have as president of the United States.

Yet, it is curious that there is virtually no interest at all in the Christian Democrat movement, which is surely the most hopeful liberal reformist movement that Latin America has seen. Why should there be no interest in pushing democracy on the part of these U.S. Christians?

> *Is it truly right to break your country's laws on behalf of people who are here illegally for better jobs?*

I believe we have happened upon one key. This is a democratic political movement, with all that means in terms of the give-and-take and imperfection of democratic politics. It seems that many, if not most, of the American Christians who go to Central America want to find movements of perfection, not of ambiguity. They want the solace of utopian revolution, not more uncertainty.

As spiritually suffering individuals, U.S. Christians feel that saving one human life is more important to them than the infinitely more complex task of transforming these basically feudal societies into something reasonably modern and workable.

As my friend Carol Birkland of the American Lutheran Church once said, thoughtfully, "It seems that many Christians today no longer want to be the preacher; they want to be the Creator."

Does this desire not to be a traditional more-or-less humble Christian mean that Christians should position themselves in every area of Central American politics while seeking some new utopia? Many Christians apparently think so; but this is a (to use an apt word) bedeviling process.

It puts them on a collision course with their own government, as it inevitably did these last couple of weeks. This might be justified if the United States were really responsible for what has happened in a place such as El Salvador. The truth, however, is that, if anything, the United States should be blamed for doing nothing there. From 1972 to 1978, the key years for the breakdown of the country, the United States was so uninterested in its little neighbor that it did not even have a CIA station there.

The search for utopia also causes the church people, many of them in the well-meaning sanctuary movement, to see the Salvadoran refugees in the United States as "political refugees." Every bit of evidence shows this to be false — the great mass of the approximately 500,000 Salvadorans in this country are seeking a better economic life.

So one has to ask, is it truly right to break your country's laws on behalf of people who are here illegally for better jobs? Is it right to refuse so resolutely to see the true totalitarian impulse behind the search for "utopian" societies and thus to take the responsibility for leading others into that totalitarianism?

My own answer to that is that Jesus Christ was no innocent. He knew man's nature, in all its sordidness, and in all its hope. The church people in the sanctuary movement are unquestionably genuine in their moral hope, but they are dangerously naive in their political analysis.

Georgie Anne Geyer is a nationally syndicated columnist.

THE WALL STREET JOURNAL WEDNESDAY, APRIL 17, 1985

REVIEW & OUTLOOK

The 'Sanctuary' Movement

One of the most striking aspects of last year's long and often emotional debate over the Simpson-Mazzoli immigration bill was that however tense the arguments became over U.S. attitudes toward Mexicans seeking economic opportunity here, all sides played most of the time with their cards face up and on the table. Now the issue of foreigners fleeing to a better life in the U.S. is percolating through the news again, but this time it's more difficult to clearly identify the motives and goals of the people involved in what has come to be known as "the sanctuary movement."

For the past several years, various Protestant and Catholic congregations around the country have been harboring illegal aliens from Latin America. The church people say most of these aliens are from El Salvador, Guatemala or Honduras, and that they've fled here fearing political persecution or even assassination by their own governments. The church groups believe these people deserve the protection of the federal Refugee Act of 1980. The Reagan administration disagrees, arguing that many of the aliens are non-qualifying "economic refugees," and last year the government began prosecuting sanctuary-movement leaders who were bringing Salvadorans north through "underground railroad" systems.

Our own instincts on these refugee and immigrant questions has generally been to avoid getting bogged down in definitional legalisms over political vs. economic hardship and to simply regard anyone with the courage and wit to get here as a potential asset. Some theoretical limits on the number of yearning souls the U.S. can absorb may well exist. But we've yet to see convincing evidence that the projected number of opportunity-seekers from Mexico, El Salvador, Asia or elsewhere is at all near the point of apocalyptic social and economic collapse predicted by those who want to restrict entry by these people.

Nonetheless, we and others have become troubled by the church-sponsored "sanctuary movement." The evidence mounts that what we have here is not so much a spontaneous outpouring of Christian concern as it is a movement led by a politically selective network of activists running an aggressive offensive against U.S. foreign policy in Central America. Most of the time, the activists are content to let the church people get out front to give Scripture-quoting interviews. But the organizations' political directors have spoken often enough to make clear the "sanctuary" movement's familiar far-left agenda.

"An escalating military budget is taking money from the poor in this country to kill the poor in other countries," says Renny Goldman of the Chicago Religious Task Force on Central America, the movement's key organization. "It's the same as what the government did to draft resisters during the Vietnam War," says Jim Harrington, Texas director of the ACLU, speaking of the government's decision to prosecute some sanctuary leaders. The flow of refugees "will only stop if our government stops giving weapons to the Guatemalan government—the people's killers," the Chicago Task Force's Ms. Goldman says, blithely ignoring the fact that the U.S. does not supply weapons to Guatemala.

Defending a sanctuary worker in federal court last year, lawyer David Sheehan of the Christic Institute likened the Salvadoran refugees to Jews fleeing Hitler in World War II and the sanctuary workers to Mary and Joseph protecting Jesus from King Herod. Mr. Sheehan later said he had documents "proving, without dispute, that the Ronald Reagan administration is fostering torture and death" in El Salvador.

The key to understanding what's going on here is the provision in U.S. refugee law giving refugee status to foreigners with a "well-founded fear of persecution" because of, among other things, their "political opinions." The sanctuary activists obviously hope to draw into the movement sympathetic Christians whose role is to create a wave of innocent, selfless sympathy for the illegal Latin aliens. Then, if the Reagan administration confers asylum status on the Salvadorans here, the activists running this operation can loudly claim that the administration has, in effect, delegitimized the government in El Salvador or Honduras or Guatemala. Ironically, Salvador's popularly elected president, Napoleon Duarte, is a socialist, suggesting that the sanctuary movement is less interested in what the left thinks presumably will help Latin Americans than it is in trying to damage a conservative American government.

This past February, three well-established migrant and refugee groups—the American Jewish Committee, the Center for Migration Studies and the International Rescue Committee—said in an unusual joint statement that "the tendency to confuse refugee and foreign policy is among the most dangerous and discouraging trends of recent debates on this issue." The importance of this joint statement is that it is the first time to our knowledge that centrists have blown the whistle on the left's recurring attempts to seize control of well-intentioned movements in U.S. political life. Strategic nuclear issues, civil rights, feminism, Catholic economic doctrine, human rights—all in recent years have been taken over organizationally by left-wing activists who've led their mainstream followers to the irrelevant fringes of public policy.

The plight of the world's growing population of political and economic refugees deserves serious attention. The "sanctuary movement," however, does not provide it.

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THURSDAY, JANUARY 17, 1985

No legal sanctuary

This being a nation of laws, it is odd that the National Council of Churches should find it, as it says it does, "surprising and shocking" that the government has cracked down on the sanctuary movement under which some churches have protected those they consider political refugees from Central America.

The last vestiges of the ancient concept of sanctuary — under which some kinds of fugitives could receive limited and temporary protection from civil authorities — were eliminated from most nations' laws in the 18th century.

Those harboring illegal aliens inside or outside of churches are violating the law, irrespective of the worthiness of their motives. There is in the United States a tradition of social recognition of civil disobedience, but that tradition includes an understanding that violators of the law will be subject to prosecution.

It is, of course, deeply troubling when the dictates of individual conscience run counter to the dictates of law. The most desirable remedy is for energy to be focused on changing the law rather than disobeying it.

U.S. immigration laws provide for asylum in certain kinds of cases. Critics of those laws or of their application should take their case to Congress or the courts. That is an imperfect remedy, but it remains the best one in a pluralistic society where there is no more agreement on some matters of conscience than there is on some laws.

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The Detroit News
DETROIT, MICH.
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EDITORIAL

The Politics of 'Sanctuary'

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Beyond the glare of national publicity a church-based movement has been using generous American immigration laws to oppose U.S. policy in Central America. A growing number of religious activists have declared that their consciences require them to offer and provide "sanctuary" to illegal immigrants from El Salvador and Guatemala.

Cutting across denominational lines, the sanctuary movement numbers as many as 200 churches and synagogues nationwide, including several in Michigan. Sanctuary workers argue that their refugees would be murdered by death squads if they returned home.

That claim has a hollow ring, however. If you can demonstrate to the Immigration and Naturalization Service (or, barring success, to an appellate court) that repatriation entails a risk of racial, religious, or political persecution, you will be granted status as a political refugee. This allows you to bypass normal immigration procedures and jump ahead of the other applicants whose only motivation is a desire to be Americans. Of 470,000 immigrants to our shores in 1984, 72,000 were political refugees. Several hundred Salvadorans were among that group and received asylum — the first step toward legal immigration as refugees — while the claims of several thousand were rejected. No other nation can boast such generous numbers.

The trouble starts if you claim refugee status on the basis of a lie. If the authorities find out, you can be sent home. That is why aiding illegal immigration is considered a serious offense, as sanctuary workers in Texas recently found out. Leaders of the movement in Texas recently were convicted of harboring fugitives and could have received long prison sentences. Cases against a dozen or so others across the land are in progress.

The State Department, which advises the Immigration and Naturalization Service on the granting of political refugee status, maintains that a great many immigrants from Central America, and in particular El Salvador, have been misrepresenting themselves as political refugees. When Assistant Secretary of State for Human Rights Elliott Abrams and other officials refer to these as "economic migrants", it is not, as the sanctuary movement alleges, that they see anything wrong with coming here for economic reasons. Most immigrants come here for economic reasons. They're just saying these migrants are no different from others — and therefore must play by the same rules as everyone else.

Nonetheless administration officials have taken seriously some Salvadorans' claims that they would be murdered by goons in the pay of Miami-based emigre oligarchs. In recent years the State Department has asked American diplomatic personnel in El Salvador to monitor refugees unobtrusively. So far, they have found no evidence that returnees have been subjected to violence from either the right or the left. Significantly, this finding is entirely consistent with the research of the Geneva-based Inter-Government Committee for Migration, which provides resettlement services for every returnee to El Salvador. Salvadoran human rights organizations, including the one which the American left prefers, Tutela Legal, reported the deaths of two returnees in 1981 and none since then. And when the sanctuary movement claimed that Amnesty International had evidence that a third of the returnees to El Salvador were being killed or tortured, it was met by a flat denial by the organization's Latin American coordinator.

The fact is Salvadorans for decades have entered the United States illegally. By one count, there are half-a-million illegal Salvadoran immigrants in the United States today. Being sent home is no big deal: They will try again next year. Repatriation thus does not mark people for death, as the sanctuary movement asserts. It's an everyday thing in El Salvador.

Yet if the claim that the danger to returning illegal immigrants is specious, why are religious organizations defying U.S. immigration law? Their purpose is not a great mystery. Their real aim is not the U.S. immigration laws that they are flouting, but U.S. policy in Central America and beyond that, as one movement leader put it, the "fundamental economic priorities of the American system."

Sanctuary workers are convinced that U.S. policy in Central America, which is to prevent a Marxist-Leninist takeover, is responsible for the influx of Salvadorans, even though El Salvador, which is the most densely populated country in the hemisphere, was sending us migrants legal and illegal long before most people knew where it was on the map.

Rather than breaking laws, these activists should try to change American policy through the political process. Inventing new and extra-legal roles for U.S. churches and synagogues will only make it more difficult for Americans to determine through sober and democratic debate what our proper role in Central America should be.

PREPARED STATEMENT OF THE MOST REVEREND ANTHONY J. BEVILACQUA, ROMAN CATHOLIC BISHOP OF PITTSBURGH

MR. CHAIRMAN, MEMBERS OF THIS SUBCOMMITTEE:

The United States Catholic Conference welcomes this opportunity to present its views on S. 377 (identical with H.R. 822 in the House of Representatives). The proposed legislation, popularly referred to as the "De Concini/Moakley Bill," provides for a General Accounting Office ("GAO) investigation and report on the living conditions of nationals of El Salvador who have been displaced from their habitual homes because of the strife in that country. It provides for an interim remedy of temporary suspension of detention and deportation of certain nationals of El Salvador who are physically present in the United States, as of enactment of this legislation, during the GAO investigation and a period of nine months after transmittal of the report of the investigation to the Congress. It mandates the initiation of committee hearings to consider the report, the appropriate steps that should be taken to assist and assure displaced Salvadorans of their personal safety, and the continuation or removal of restrictions to the detention and/or deportation of these individuals. The United States Catholic Conference considers this bill to be worthy of our support, and urges prompt passage by both houses of the United States Congress.

The U. S. Bishops have taken the same position on this subject since 1981: that Congress enact such legislation on behalf of the displaced people of El Salvador at the earliest possible moment.

The Administrative Board of the National Conference of Catholic Bishops, United States Catholic Conference, in September 1981 stated:

> "It is our feeling that while their country remains in such a state of turmoil, the citizens of El Salvador who are stranded in the U.S. should not be forced to leave when their very physical well-being, regardless of political philosophy, is in danger. We, therefore, urge that a moratorium be placed on all deportations to El Salvador, at least until such a time as the government in power is in a position to guarantee the safety of its citizens."

Archbishop James Hickey spoke on behalf of the United States Catholic Conference to the "Kissinger" Commission in October 1983, saying:

> "A first recommendation applies to the U.S. The USCC has long advocated a policy of Extended Voluntary Departure for Salvadoran refugees in the U.S. We find no good reason why this status is applied to other groups in similar situations and denied to Salvadorans. We hope the Commission will add its weight to this just and humane proposal in your final report."

John E. McCarthy, Director Emeritus of USCC Migration and Refugee Services, had welcomed the predecessor of this bill in the 98th Congress, saying:

> "The U.S. cannot ignore the reality of El Salvador. With a population of just over 5 million people, nearly 25% are displaced from their homes, their jobs, their families. The political and social unrest, which continues at an unacceptable level in that once-beautiful country, causes great concern among the Roman Catholic Bishops of the U.S., as it should cause concern for all the American people.
>
> "In 1980, when the Congress of the U.S. passed the Refugee Act, it stated: 'The Congress declares that it is the historic policy of the U.S. to respond to the urgent needs of persons subject to persecution in their homelands...'. This proposal enforces that historical policy. It calls for a careful study of the situation of these persecuted, displaced Salvadorans within El Salvador, in countries around El Salvador, and in the U.S. It requires us to recognize our role in the Congress of Nations as a 'First Country of Asylum'.
>
> "The Roman Catholic Bishops have called for an extended discretionary stay for all non-criminal, non-subversive asylum seekers in the U.S. This bill offers that relief for Salvadorans. Let us help these people."

As recently as April 17, 1985, His Eminence John Cardinal O'Connor, Archbishop of New York, in testimony in behalf of the United States Catholic Conference before the House Foreign Affairs subcommittee (delivered in his absence by Archbishop James Hickey of Washington, D.C.), declared that a moratorium on all deportations to El Salvador:

> "...has continued to be the USCC recommendation regarding the half-million or so recent arrivals from El Salvador, extended to include the many thousands from other countries of Central America. The conference has been encouraged in this position by members of the Central American episcopates."

The testimony went on to note that although there are some signs of improvement in the situation so as to give great promise for the safety of individual deportees to El Salvador:

> "Nonetheless, in view of the large areas of conflict where ongoing struggle between the government and guerrilla forces renders many villages, farms and other country areas dangerous, it seems necessary that the U. S. government be urged on humanitarian grounds to grant extended voluntary-departure status to Salvadorans, Guatemalans and Nicaraguans as it has to citizens from Uganda, Afghanistan, Poland and others who have taken refuge from countries in conflict."

The Chairman and the ranking Minority member of this Subcommittee, and the subcommittee Chairman in the House of Representatives have, in the past, jointly declared their intent to work during the 99th Congress to develop non-country-specific statutory language to provide temporary relief to persons who are so fortunate as to arrive at, or enter into, this country in search of temporary haven from refugee-generating situations and, even, from large-scale natural calamities. Without seeking to delay passage of this bill, the Conference asks members of this subcommittee to consider a minimal expansion of the scope of the bill so as to include nationals of Guatemala and Nicaragua in the investigations and temporary relief afforded by provisions of the bill. Furthermore, Title II of the bill should mandate consideration of possibilities for truly voluntary repatriation of individuals afforded temporary safe haven in the United States after congressionally-sanctioned findings that the individuals afforded such relief can safely return and live in their native lands.

In making the above proposals, the Conference seeks no change in the law and benefits provided by law to those individuals who are able to establish that they meet the statutory definition of refugee. Rather, as recommended by the Final Act of the U.N. Conference of Plenipotentiaries, which adopted the 1951 Convention relating to the Status of Refugees, the United States should grant assistance to persons from refugee-generating countries which exceeds the "contractual scope" covered by terms of U. S. Treaty obligations and U. S. refugee law relating to the treatment of refugees, even should such individuals not technically meet the definition of the term "refugee".

In conclusion, the sponsors of this bill have given testimony as to its reasonableness. They have indicated its consistency with the historical pattern of humane concern for the displaced and refugees of the world, and the best traditions of this country as a haven for victims of strife and conflict. The relief extended by the bill is not permanent; it is temporary and minimal. It is an interim measure which neither extends nor grants additional rights to those coming within its ambit. Whether additional relief is either appropriate or desirable must await the outcome of the GAO investigation. The Conference gives its wholehearted endorsement to these conclusions.

Unlike those who might argue that "close proximity" to the troubled area demands harsher and more stringent control over such people, the United States Catholic Conference calls for a more magnanimous and compassionate response to the needs of the Salvadorans and others who will be assisted by this legislation. As stated in the first title of the Refugee Act of 1980, the United States accepts as its historic policy,

> "...to respond to the urgent needs of persons subject to persecution in their homelands, including, where appropriate, humanitarian assistance for their care and maintenance in asylum areas, efforts to promote opportunities for resettlement or voluntary repatriation, aid for necessary transportation and processing...".

The United States Catholic Conference offers its own commitment to this task, and calls upon the Congress to make fulfillment of that task possible.

Church Sanctuary:

Historical Roots and Contemporary Practice

By

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Washington, D.C.

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"The struggle for justice has reached a new stage. Now the pastoral has merged with the political, service is prophetic, and love is a subversive activity."

Reverend Sid Mohn, United Church of Christ.

"If we allowed clergymen to take seriously the notion of asecular asylum ... it seems to me that we would have degraded the concept of asylum thoroughly and we will have introduced 'Mickey Mouse' into theology."

President John Silber, Boston University.

The use of churches as places of refuge for illegal aliens from war-torn Central America is rapidly gaining acceptance by the clergy and the lay community. In particular, "sanctuary" is being invoked as a means of civil disobedience to protest the government's practice of deporting undocumented Salvadorans back to their country. The harboring of illegal aliens under the name of sanctuary is thus being offered by the churches as a symbol of resistance to United States support for the governments of El Salvador and Guatemala.

Theologians and others have been quick to point out that the current practice of offering sanctuary to fugitives is but a continuation of a Judaeo-Christian tradition. In part, their justification is based upon the claim that they are simply observing a custom which can be traced back to the Old Testament and medieval canon law. In their eyes, sanctuary has always been of deep "religious-political significance." As one minister explained, since the earliest times, "God's law could be invoked ... in opposition to civil law."[1]

Within this context, it is important to determine what has been the historical usage of sanctuary by the church? Was it ever envisioned to be used as a challenge to civil authority? Could any fugitive from justice place himself under ecclesiastical care? Only by examining both the form and substance of this ancient tradition can we judge whether these modern advocates of sanctuary are truly following the practice as developed in the canonical codes of the church.

The legal basis for church sanctuary can be found in the Old Testament with the establishnent of the Levitical cities of refuge for those guilty of involuntary homicide.[2] The intention of this law was to rule out blood vengeance and any other similar forms of self-help to obtain redress in this matter. In order that the cycle of retaliation be stopped and tribal unity held, the duty of vengeance by the murdered man's relatives was to be turned over exclusively to the highest authority -- God. Thus the priests, God's official spokesmen, became the arbitrators and protectors of those fleeing vengeance. This occurred not only in the ancient Near East but in the Graeco-Roman world as well.

By the late medieval ages, with the growth of state power and the king's authority, royal edicts were now conceived to restrain this "license" of revenge and to limit the duration of feuds. Yet custom dictated that the clergy have a special role as intermediaries between criminals and those who desired vengeance. Thus the church in time became a recognized place of refuge for those involved in any number of crimes.

As one can imagine, the whole matter of sanctuary became involved in the perpetual struggle between church and state. However, agreement was reached between the secular and ecclesiastic authorities on this issue. Though the law of sanctuary varied from country to country as a result of local custom, the Christian kingdoms were indeed governed by a set of common sanctuary principles.

Overall, one could seek sanctuary in any religious center, be it a church, monastery or abbey. In fact, a number of such places were specially chartered by the crown for that purpose. However, not every type of criminal was permitted to go into sanctuary or, if they got in, allowed to remain. Those excluded from the privilege were repeat offenders, heretics, sorcerers, those already convicted of an offense, and suspected or indicted traitors. On this latter point, it is interesting to note that kings often commanded that their political enemies who fled to sanctuary be removed.

According to canon law (especially as formulated in England) those who arrived safely within the precincts of a sanctuary were expected to make a confession of their misdeeds to the ecclesiastical officials, surrender any weapons, and put him or herself under the supervision of the religious head.[3] Depending upon the place of sanctuary, the fugitive might be required to wear religious garb and take part in daily activities such as the ringing of the bells and the attendance of mass.

Contrary to contemporary beliefs surrounding the practice of sanctuary, the fugitive was not given an indefinite period of time to remain on church grounds. Moreover, his future options were specifically circumscribed. Within a period of forty days, the individual was given the choice of either taking an oath to "foreswear the realm" (i.e. go into permanent exile) or surrender to the king's authorities and stand trial. On the continent of Europe, as opposed to England, there existed the possibility (though rare) of remaining and joining a religious order for the duration of one's life.

In England, if one decided on exile and took the formal oath, he was first to be branded on the thumb with the letter "A". Then he was given a set number of days to make his way on the king's highway to the border or port of departure. He was to travel barefooted, bareheaded, and wearing a white sackcloth on which a red cross would be painted. Townsmen would accompany him in order to guarantee his safety from vengeance seekers. As one would expect, all lands and goods would be forfeited.

In regard to those who sought to turn themselves in to the civil authorities, the forty days offered the fugitive time to contemplate his offense and prepare his case. Furthermore, the formal transfer from ecclesiastical to lay officials would take place under guard, thus keeping the defendant safe from any retribution by avenging parties.

With the Reformation in the 16th century, came a critical questioning of the practice of sanctuary.[4] The early leaders of the Reformation held the concept to be invalid as the physical presence of the church, as well as the clergy within, were thought to have no exclusive hold on holiness. Furthermore, they were quick to side with the Protestant princes in their fight to obtain supreme authority over their domains. The French king and other Catholic monarchs soon followed suit to abolish sanctuary. If the least confidence in public order was to survive, they held that violent criminals could not be allowed to escape civil justice.

In order to accommodate these needs, in 1591, Pope Gregory XIV issued a Papal bull which restructured the process of granting sanctuary. Henceforth, when a bishop received an application, the individual was to be taken out of sanctuary and placed into the episcopal prison until he could be tried by the ecclesiastical authorities for his crime. If the evidence gave reasonable grounds for a guilty verdict, the accused was to be immediately handed over to the civil authorities for trial in the state's court.

As an indication of their goodwill toward the temporal powers, as well as to avoid further conflict over an issue which they were sure to lose, the Popes later removed the right of sanctuary for anyone whose acts resulted in a death; regardless of circumstances. By the late 17th century, the only ones seeking sanctuary were debtors. A period of two months therefore was established for the individual "to make grace," at which point the debtor would be expelled from sanctuary and thrown to the mercy of his creditors.

Though sanctuary remained in the canonical code books of the church, it was very rarely practiced from the 18th century onward. The use of churches as places of refuge for civilians fleeing the horrors of war did continue in the modern era, but the laws of warfare did not designate churches as places of safe haven for the noncombatant population. Unfortunately, no international conventions recognized churches as a refuge for the innocent.

It should be noted that in America, given the early separation of church and state, a law of sanctuary never existed. There was a brief attempt by isolated Protestant churches in the North to establish the "right of sanctuary" for escaped slaves from the South, but it was never officially recognized. Persons could seek refuge in a church, but the clergy had no formal power to refuse the entrance of public law officers to arrest runaway slaves. During the Vietnam War, draft resisters sought the protection of the church but that, too, failed as there was no legal precedent for sanctuary.

Given this brief review of the historical usage of sanctuary by the church, we can see that the contemporary practice of sanctuary does not have firm roots in ecclesiastical tradition. Sanctuary was never meant to openly and defiantly challenge the civil authorities. In addition, those seeking sanctuary were not encouraged by the clergy or their congregations. Furthermore, once inside church grounds, it was expected that the fugitive would resolve his uncertain status by either turning himself in to the king's officials to stand trial for supposed crimes or permanently leave the country altogether. Finally, sanctuary, as a place of refuge where the a person could remain with a certain immunity from the state, was a foreign practice and was never accepted in the United States.

It should come as no surprise then, that the Catholic Church -- having the longest tradition of sanctuary -- does not find the concept valid today. In the revised canonical code there is no mention of sanctuary. As one canon scholar commented on its disappearance, "sanctuary no longer has a place in contemporary church practice." As far as the

Archbishop of Washington, D.C. is concerned, for Catholics, sanctuary will remain that part of the Church that used to be separated from the congregation by the communion rail.[5]

As a rule, church authorities throughout history have never relished their confrontatioins with the temporal powers over the harboring of illegal persons. This situation seems to exist at present as a majority of the Catholic bishops are still not in favor of initiating "sanctuaries" in their dioceses for illegal aliens hiding from the immigration service. Many are of the opinion that civil disobedience can be employed only when every other remedy has been exhausted, and clearly, wrote the editor of the Catholic Standard, "this is not the case here."[6] Lawyers are indeed available and the courts are open for those Salvadorans who wish to apply for legal residency on the grounds that they are fleeing political persecution from their country rather than harsh economic conditions. U.S. refugee law specifically states that those illegal aliens who can prove they would be persecuted if they returned home will not be deported but given asylum. "I do not feel at the present time," said Auxiliary Bishop Bevilacqua of Brooklyn and chairman of the Catholic Bishop's Committee on Migration, "that this is an unjust law."[7]

As most people are no doubt aware, de facto sanctuary already exists in this country for most illegal aliens. Over half a million Salvadorans are now illegally in the United States. If the 1983 rates of deportation are any indication, a majority of those here can expect to stay indefinitely. The limited resources devoted to immigration enforcement rule out in the near future any widespread apprehension and detention. In addition, the INS, while willing to arrest undocumented aliens almost anywhere, has yet to drag anybody out of a church. Government agents have indeed respected churches, parishers, clinics and classes run by the clergy, thereby allowing Salvadorans to gather with a sense of security in these places. By publicly humiliating the INS, sanctuary advocates may jeopardize the very Salvadorans whom they wish to assist.

Unfortunately, the motivations of some of those pushing church sanctuary in their congregations are not entirely humanitarian. These activists do not simply want to help illegal Salvadorans in this country, they want to use them in a campaign against U.S. support for the government of El Salvador. As reported in Christianity and Crisis, "one of the primary objectives" of the sanctuary movement, is "to offer living testimony about the war's effects. Saturation of political analysis does not deeply educate the North American base church about the effects of State Department policy in Central America."[8] The Reverend John Fife, one of the leading church spokesman for sanctuary, stressed the importance of this political purpose, "lest religious groups think of the sanctuary project as church sponsored resettlement programs."[9] And in the Church World Service resource booklet, Seeking Safe Haven (a "how to" book in regard to establishing church sanctuary), the authors emphasize that these fugitive Salvadorans are to be used as "a symbol of resistance" like Vietnam war draft resisters, to dramatize the "immorality of U.S. intervention."[10]

The literature produced, as well as the statements made by many of the churches and sanctuary activists, leaves one with the impression that the overall goal of the sanctuary movement is not so much to protect illegal aliens in distress, as it is to "raise the consciousness of the nation."[11] Under such circumstances, the theological justifications given for church sanctuary seem only be be a window dressing for political motives.

Another disturbing factor associated with the sanctuary movement is that it actually endangers the American refugee program. Sanctuary advocates make a point of classifying most Salvadorans who make their way northward as "political refugees." Yet, as even the liberal Washington Post recently pointed out in one of its editorials, most are fleeing not violence or political persecution in El Salvador, "but economic hardship in Mexico, their port of first asylum."[12] By confusing the specific distinction between economic migrants and refugees, the entire concept of political asylum that we have so carefully constructed in the Refugee Act of 1980, will be progressively eroded and finally destroyed. As the U.S. Coordinator for Refugee Affairs has often stated, "If everyone is a refugee, then no one is a refugee." There can be no doubt that those who mislabel migrants as refugees cloud the crucial legal and moral difference that protects refugees and our ability to offer them an immediate safehaven.[13] The urgency of a person targeted for political oppression cannot be compared to one seeking better economic opportunities.

It should be noted that a majority of Salvadorans in the United States are would-be immigrants who want to live here. In fact, ten years ago, well before the Salvadoran insurgency began, a quarter of a million to half a million Salvadorans were estimated to be in this country illegally. Their presence reflects a longstanding pattern of economic migration to the United States stemming from the reality that El Salvador, besides being poor, is the most densely populated country in the Western Hemisphere. Church sanctuary therefore only encourages further illegal immigration from El Salvador. If this trend continues, the nation may be forced to change its benign enforcement policies and its tradition of generosity.

In regard to those Salvadorans who have not been singled out for persecution but who nevertheless have been displaced by the fighting, there are numerous opportunities for temporary asylum in neighboring Central American countries. The question that needs to be asked, is why should these people be singled out for resettlement in the United States when this preference is not made available to the rest of the millions of displaced persons around the globe? In terms of the resettlement option, we must distinguish between those persons fleeing persecution because of race, religion, nationality or political opinion, who can never return to their country of origin, with those uprooted individuals already in a country of first asylum who are likely to be able to pick up the pieces of their lives back home once the fighting is over.

It is truly unfortunate that many sanctuary activists in order to win sympathy for their cause, tend to downplay the U.S. Government's support for refugee care. At present, the United States is still by far the most generous country in the world when it comes to refugee assistance.[14] We have accepted more refugees for permanent resettlement than all the other Western countries combined. Close to three quarters of a million Southeast Asian refugees alone have been given a safe haven here. (Of course, this does not include the nearly 500,000 legal immigrants accepted yearly worldwide.) Furthermore, the United States provides more assistance than any other country to the United Nations High Commissioner for Refugees (UNHCR), the Red Cross, and other related international agencies and organizations concerned with refugees and displaced persons. In 1983, U.S. contributions to the UNHCR and the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), accounted for 30 percent of their respective budgets.

In particular, the U.S. Government actively assists, through funding and other means, church-related refugee assistance programs, be they in the feeding and housing of refugees in countries of first asylum (e.g. Honduras, Pakistan, Somalia, Thailand) or in resettlement programs here. According to recent figures, voluntary agencies received $31 million for their domestic programs and some $29 million for their work overseas. Thus, contrary to claims made, the U.S. Government and the present Administration does indeed support the various churches and private organizations in their efforts to assist uprooted and displaced persons fleeing the violence of their homeland -- regardless of region or race.

In conclusion, the success of the sanctuary movement will ultimately be determined by the congregations and not the activists within their ranks or the clergy. More specifically, it will depend upon what moral obligations sway the American public.[15] Generally speaking, Americans vacillate between "minimal altruism" (which entails that one help others when it can be done so without great cost) and "heroism" (which calls for major personal sacrifice) when it comes to questions of helping the less fortunate of the world. While the Judaeo-Christian ethic does obligate us to assist the less fortunate, our Social Darwinist tradition prevents compulsion toward heroic behavior. Thus no national consensus exists which would accept the curtailment of individual welfare in order to allow the millions of poor and oppressed persons a homeland in the United States. Given that a majority of American citizens advocate both increased immigration law enforcement (i.e. deportation of illegals) and a reduction in legal immigration flows, it seems unlikely that good samaritanism or notions of communal guilt will have significant strength to sway middle-class America toward the sanctuary movement.

Sanctuary to most Americans will remain an aviary that is off limits to hunters.

FOOTNOTES

1). Sid L. Mohn, "Central American Refugees: The Search for Appropriate Responses," World Refugee Survey 1983 (New York: American Council for Nationalities Service), p. 45.

2). See Moshe Greenberg, "The Biblical Conception of Asylum," Journal of Biblical Literature, Vol. 78, 1959, pp. 125 ff.

3). See John Bellamy, Crime and Public Order in England in the Late Middle Ages (London: Rotledge & Kegan, 1973); John Cox, The Sanctuaries and Sanctuary Seekers of Mediaeval England (London: G. Allen & Sons, 1911); Georgius Rittershusius, De Jure Asylorum, 1623.

4). See Owen Chadwick, The Popes and the European Revolution, (Oxford: Clarendon Press, 1981).

5). Memorandum on Sanctuary, March 15, 1983, Office of the Archbishop, Archidocese of Washington, D.C.

6). "Sanctuary: For the Birds," Editorial, Catholic Standard, March 24, 1983.

7). "U.S. Churches Offer Sanctuary to Aliens Facing Deportation," New York Times, April 8, 1983, p. A-38.

8). Renny Golden and Michael McConnell, "Sanctuary: Choosing Sides," Christianity and Crisis, February 21, 1983, p. 35.

9). Ibid.

10). Seeking Safe Haven (New York: Church World Service, 1983), pp. 66-67. This is actually a congregational guide produced with the American Friends Service Committee and the Lutheran Immigration and Refugee Service.

11). See the material produced by the Chicago Religious Task Force on Central America. It should be noted that their publication, "Basta: Sanctuary Organizer's Nuts and Bolts Supplement," contains misleading statements. Just recently, Amnesty International had formally taken this group to task for falsely attributing to them incorrect data regarding Salvadoran Deportees, in particular, that 30 percent of those Salvadorans returned "are tortured, maimed or murdered upon their return."

12). "Deporting Salvadorans," Editorial, The Washington Post, April 2, 1983.

13). See H. Eugene Douglas, "Sanctuary Advocates are Wrong," Editorial, USA Today, April 20, 1984; Elliott Abrams, "Diluting Compassion," Editorial, New York Times, August 5, 1983.

14). On U.S. support for refugees see Report to Congress: Proposed Refugee Admissions and Allocations for Fiscal Year 1983 (Washington D.C.: Office of the U.S. Coordinator for Refugee Affairs, State Department).

15). For more on this topic see the author's, "Our Brother's Keeper? Theories of Obligation in U.S. Refugee Policy," World Refugee Survey, 1983.

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Title FACT SHEET: TEMPORARY SUSPENSION OF DEPORTATION FOR SALVADOREAN REFUGEES

Contact Charles Kamasaki or Dan Purtell at (202)628-9600

I. INTRODUCTION

Congressman Joe Moakley (D-MA) and Senator Dennis DeConcini (D-AZ) have introduced legislation (H.R. 822, S. 377) providing for the temporary suspension of deportation of Salvadorean refugees pending a detailed study of their situation. Recent extensive news coverage of the arrest and 71-count indictment of 16 church leaders in the U.S. "sanctuary movement," which provides safe haven for Central American refugees, has focused widespread media attention on this issue. This fact sheet explains the background and purpose of the legislation, the so-called Moakley-DeConcici bill.

II. BACKGROUND

For over five years, a brutal civil war has ravaged the small Central American nation of El Salvador. Widespread violence has accounted for 40,000-50,000 civilian/noncombatant deaths in that country. Intense combat between the country's armed forces and its left-wing opposition, and a war-torn economy, have led to profound political and social upheaval, forcing many hundreds of thousands of people to flee their homes. Current estimates of numbers of "displaced persons" demonstrate the magnitude of this exodus: 525,000 have left their homes but remain within El Salvador; nearly 250,000 are in Mexico, Guatemala, and other countries of the region; and 300,000-500,000 Salvadoreans now live in the U.S. Overall, approximately 25 percent of the total population has been displaced.

Although many observers contend that Salvadoreans now in the U.S. meet the definition of "refugee" provided in the Refugee Act of 1980, the U.S. State Department takes the position that Salvadoreans are economic, rather than political, immigrants, and as such do not qualify for refugee status. While the current Administration has argued that those Salvadoreans with valid fears of persecution can apply for political asylum, only 2.5 percent of Salvadoreans whose applications were reviewed by the Immigration and Naturalization Service (INS) last year have been granted asylum, and many thousands have been deported.

Religious, civil rights, and civil liberties groups have documented over one hundred cases in which Salvadoreans deported from the U.S. were murdered upon return to their home country. Estimates of actual totals of such cases run much higher. These and other organizations have called upon the Administration to grant Extended Voluntary Departure (EVD) status to Salvadoreans. EVD has been used in the past to allow citizens of countries which are experiencing dangerous conditions to remain in the U.S. temporarily. This special status is granted by the Attorney General upon the recommendation of the Secretary of State, and is revoked when conditions in the aliens' nation have sufficiently improved. Those covered by EVD currently include Ethiopians, Poles, Afghanis, and Ugandans; in the past, Cubans, Chileans. and Nicaraguans have also been granted EVD status.

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The Administration however, has repeatedly and firmly refused to grant EVD status to Salvadoreans. Therefore, Congressmembers Moakley and DeConcini introduced legislation to provide safe haven for Salvadoreans in this country.

III. CURRENT LEGISLATION

The Moakley-DeConcini bill now before Congressional committees was originally introduced in the 98th Congress. Although the bill had 151 House co-sponsors and nearly 20 Senate co-sponsors, it did not reach the floor for a vote before Congress adjourned. Major provisions of this year's legislation, which differs only slightly from the previous version, include:

- A temporary suspension of deportation of those Salvadoreans in the U.S. prior to time of enactment of the bill. The suspension ends upon completion of the study and review process outlined below (most likely a period of one-and-a-half to two-and-a-half years from the bill's enactment).
- A study, conducted by the General Accounting Office (GAO), of the circumstances of displaced persons in El Salvador and in other Central American nations; the consequences of recent deportations of Salvadoreans from the U.S. to El Salvador with respect to deportees' personal protection; and the similarities and differences between Salvadorean refugees' situations and those of other nationalities granted EVD in the past.
- Review of the study's results by appropriate Congressional committees no later than one year after initiation of the GAO study. Committees will also consider measures to assure protection of Salvadorean refugees, the appropriateness of extending suspension of their deportation, and other related issues. This review will last not longer than 270 days from the date on which the GAO report is referred to these committees.

IV. NCLR POSITION

The National Council firmly supports the Moakley-DeConcini bill. Given widespread violence in El Salvador, and evidence that Salvadoreans who are denied asylum and are forced to return to their country face both physical harm and political persecution, La Raza believes that the proposed legislation represents an essential, modest, and responsible approach to a very serious human rights problem.